

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2017

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C.No.346 of 2012

K. Kala ... Petitioner(Wife)/Respondent/Petitioner

vs.

Karthikeyan ... Respondent(Husband) /
Revision Petitioner/Respondent

Prayer: Criminal Revision filed under section 397 r/w & 401 of Cr.P.C against the judgment passed by the learned Addl. District & Sessions Judge, F.T.C. Vellore in Crl.R.C. No.63 of 2008 dated 28.04.2009, reversing the order of enhancement of Monthly maintenance amount from Rs.400/- to Rs.1000/- passed by the Judicial Magistrate, Kudiyatham by order dated 10.11.2008 in Crl. M.P.No.4722 of 2005 under section 125 of Cr.P.C.

For Petitioner : Mr. V. Paarthiban

For Respondent : Mr. D.Rajagopal

O R D E R

This Criminal Revision Petition has been filed challenging the order dated 28.04.2009 in Cr.R.C. No.63 of 2008 on the file of the learned Additional District & Sessions Judge, (Fast Track Court), Vellore, thereby revising the order dated 10.11.2008 made in Cr.M.P. No.4722 of 2005 on the file of the Judicial Magistrate, Gudiyatham.

2. The case of the petitioner is that, the petitioner is the wife of the respondent. The petitioner has earlier filed a petition under Section 125 of Cr.P.C. before the Judicial Magistrate, Kudiyatham in M.C. No.3 of 1999 seeking maintenance of Rs.400/- per month. The learned Judicial Magistrate, by an order dated 04.06.1999, allowed the application and directed the respondent to pay a sum of Rs.400/- per month as maintenance to the petitioner. Subsequently, the petitioner/wife filed another petition under Section 125 of Cr.P.C. seeking enhancement of monthly maintenance amount from Rs.400/- to Rs.1,500/- in Cr.

M.P.No.4722 of 2005 before the Judicial Magistrate, Gudiyatham. The learned Judicial Magistrate allowed the application and directed the respondent to pay a sum of Rs.1,000/- per month by enhancing the maintenance amount from Rs.400/- from the date of filing of the petition. i.e.13.10.2005.

3.Challenging the said order, the respondent/husband filed Cr. R.C. No.63 of 2008 before the Additional District and Sessions Judge (Fast Track Court), Vellore. The learned Session Judge allowed the Revision petition thereby set aside the order dated 10.11.2008 passed by the learned Judicial Magistrate, Gudiyatham in CrI. M.P. No.4722 of 2005 on the ground that the petitioner/wife who voluntarily deserted the respondent/husband without any valid reason is not entitled for maintenance.

4.Challenging the said order, the present Criminal Revision case has been filed by the wife.

5.The learned counsel for the petitioner submitted that the respondent/husband was working as Foreman in Tamil Nadu Electricity Board, and getting a monthly salary of more than Rs.13,000/-. Subsequently, he got voluntarily retirement from the service and he is now getting pension of Rs.4,287/- per month. The monthly maintenance of Rs.400/- ordered for the petitioner is not sufficient to maintain herself due to increase in the cost of living, and she has no other income to meet her medical expenses due to age related ailments. Therefore, she filed Cr.M.P. No.4722 of 2005 before the Judicial Magistrate, Gudiyatham, for enhancement of maintenance. The Trial Court after having considered the entire materials available on record and having taken note of the increase in cost of living, had come to the conclusion that the amount of Rs.400/- which was ordered as maintenance in the year 1999 would not be sufficient for petitioner, hence enhanced the same to Rs.1,000/-. But the Lower Court without considering the materials available on record in proper perspective, allowed the revision and set aside the enhancement of maintenance.

6. Per contra, the learned counsel for the respondent contended that the learned Additional Sessions Judge after having considered the fact that the respondent was a pensioner and with his meager pension amount, he has to meet out the payment of interest for the loan which was availed for the marriage of his daughter and payment of college fees to his son besides medical expenses of himself and his mother, rightly refused to enhance the maintenance as prayed by the petitioner which does not require any interference at the hands of this Court.

7.I have considered the rival submissions carefully.

8. Admittedly, the petitioner is the legally wedded wife of the respondent and she has been living separately from her husband for more than 15 years. The proceedings under Section 125 of Cr.P.C. are of a summary nature and are intended to enable destitute wives to get maintenance in a speedy manner. Section 127 Cr.P.C. provides that on proof of a change in the circumstances of any person receiving a monthly allowance for the maintenance or interim maintenance or order under Section 125 of Cr.P.C. the Magistrate may make such alterations as he thinks fit in the allowance of the maintenance or interim maintenance. In the instant case, earlier the petitioner was awarded maintenance at the rate of Rs.400/- per month by order dated 04.06.1999 by the learned Magistrate. Subsequently, she filed another application for enhancement of maintenance on the ground that maintenance ordered is inadequate in the present cost of living, which was allowed by the learned Judicial Magistrate. Aggrieved by that, the respondent/husband filed an revision to set aside the order passed by the learned Magistrate enhancing the maintenance from Rs.400/- to Rs.1000/-. Aggrieved by the same, the wife is now before this Court.

9. It is not in dispute that the respondent was working in Tamil Nadu Electricity Board as Foreman and he voluntarily retired from service in the year 2005 and he is getting a sum of Rs.4,287/- as pension. Apart from that, he would have received all his retirement benefits. On the other hand, there is no evidence to show that the petitioner has any means to maintain herself. The respondent being husband has legal obligation to provide adequate maintenance to his wife and he cannot evade such obligation by simply saying that he is getting only a meager pension. On a perusal of the order under challenge, it is seen that the learned Additional Sessions Judge without any evidence had come to the conclusion that it was the petitioner who voluntarily deserted the respondent and allowed the revision which is totally perverse. The learned Additional Sessions Judge failed to consider the fact that the maintenance under Section 125 of Cr.P.C. was ordered as early as in the year 1999, after six years, the petitioner moved the present application for enhancement of maintenance. The living conditions have now changed drastically since the fixing of the maintenance allowance with the increase in the cost of living. The trial Court after having taken note of the considerable increase in the cost of living and after having assessed the income of the petitioner, rightly enhanced the maintenance allowance in which I do not find any infirmity or illegality. But, the learned Additional Sessions Judge without considering the claim of the petitioner in a proper perspective reversed the order of the learned Magistrate which in the considered opinion of this Court is liable to be set aside as the maintenance allowance of Rs.1,000/- ordered by the learned Magistrate is just and

reasonable for the petitioner to maintain herself in the present economic situation.

10. In the result, the Criminal revision is allowed. The order dated 28.04.2009 made in Crl. R.C. No.63 of 2008 by the learned Additional Sessions Judge, Fast Track Court, Vellore, is set aside. The order of the learned Judicial Magistrate, Gudiyatham, Vellore District, dated 10.11.2008 made in Crl. M.P. No.4722 of 2005 is restored and the respondent/husband is directed to pay the maintenance of Rs.1,000/- per month from the date of filing of the petition in Cr. M.P. No.4722 of 2005 i.e. 13.10.2005

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

lbm

To

1. The Additional District and Session Court,
(Fast Track Court) Vellore District.
2. Judicial Magistrate Court, Kudiyatham
- 3.The Chief Judicial Magistrate,
Vellore(for Information)

copy to:

The Section Officer,
Criminal Section,
High Court,
Madras-104

+1cc to Mr. V. Paarthiban, Advocate sr.no.80404

Crl.R.C.No.346 of 2012

pvs(co)
nr 19/06/2018