

In the High Court of Judicature at Madras

Dated : 28.11.2017

Coram :

The Honourable Mr.Justice M.S.RAMESH

Crl.O.P.Nos.25238 of 2013 & 20937 of 2015
and
M.P.No.1 of 2013

D.Ramamoorthy ...Petitioner in both the Crl.O.Ps

Vs

1. R.Maheswari
2. Major Mounica
3. Major Logeswaran ...Respondents in Crl.O.P.No.25238 of 2013

R.Maheswari ...Respondent in Crl.O.P.No.20937 of 2015

Prayer in Crl.O.P.Nos.25238 of 2013: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order of the Learned Additional District Judge, Tirupatthur, dated 09.08.2011 made in Crl.R.C.No.5 of 2011 and partly allowing the order of the Learned Judicial magistrate - 1, Tirupatthur towards granting maintenance to the respondents No.2 and 3 by an order dated 22.04.2010 in M.C.No.10 of 2006 and allow the Criminal Original Petition.

Prayer in Crl.O.P.Nos.20937 of 2015: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the order dated 13.03.2015 made in C.M.P.No.3185 of 2011 on the file of the learned Judicial Magistrate No.1, Tirupatthur and set aside the same by allowing this Criminal Original Petition.

For Petitioner : Mr.R.Venkatesan in Crl.O.P.No.25238 of 2013
: Mr.N.Manokaran in Crl.O.P.No.20937 of 2015

For Respondents: Mr.P.S.Kothandaraman
in Crl.O.P.No.25238 of 2012
: Mr.P.A.Sudesh Kumar
in Crl.O.P.No.20937 of 2015

COMMON ORDER

The issues involved in both the criminal original petitions are one and the same and hence they are disposed of by this common order.

2 For the sake of convenience, the parties are referred to as husband, wife and children. By an order passed in M.C.No. 10 of 2006, dated 22.04.2010, the husband was directed to pay a sum of Rs.5000/- towards alimony and Rs.500/- towards educational expenses, to each of his children who are the respondents 2 and 3 in Crl.O.P.25238 of 2013. The respondent in Crl.O.P.No.20937 of 2015 is the wife of the petitioner.

3 As against the said order dated 22.04.2010, two revisions came to be filed in Crl.R.C.No.3 of 2010 by the wife and Crl.R.C.No.5 of 2011 by the husband. Both the revisions were disposed of by a common order dated 09.08.2011, modifying the earlier order, granting maintenance to the effect that the husband was directed to pay a sum of Rs.3,000/- to each of his children as well as to his wife.

4 As against the order dated 09.08.2011, the husband had filed Crl.R.C.No.1382 of 2011, which was also dismissed by this court on 29.07.2013.

5 The wife and children had filed C.M.P.No.3185 of 2011 for attaching the husband's salary for the arrears of alimony. By an order dated 13.03.2015, the husband's salary came to be attached as prayed for by the wife and children.

6 As against the order dated 13.03.2015 made in C.M.P.No.3185 of 2011, the husband has filed Crl.O.P.No.20937 of 2015. He also filed Crl.O.P.No.25238 of 2013, challenging the common order passed in Crl.R.C.No.3 of 2010 and Crl.R.C.No.5 of 2011 dated 09.08.2011.

7 Pursuant to the same, the wife had filed a petition in C.M.P.No.1091 of 2014, seeking for enhancement of the maintenance under Section 127 (1) Cr.P.C. and it is pending before the Court below.

8 Heard both sides and perused the materials available on record.

9 Today, when the matter was called, the learned counsel for the husband submitted that as on date, the outstanding amount is about Rs.4,83,000/- and that he had made a substantial payment of Rs.4,10,500/- by way of direct payment as well as through attachment. The learned counsel for the wife and children, on the other hand, submitted that the total outstanding was Rs.8,55,000/- and as on 27.03.2017, a sum of Rs.3,20,500/- alone was paid and thereby, the amount of Rs.5,34,500/- is due from the husband. I do not intend to go into these disputed question of facts, since the same have to be

gone on the basis of proper evidences.

10 At this juncture, the learned counsel for the husband submitted that pursuant to the orders of maintenance, the wife has acquired an employment with income sufficient to maintain herself. Like wise, the children have also attained majority and they are also employed. Hence, the husband intends to seek for alterations in the order of maintenance as modified in the revision by an order dated 09.08.2011. The learned counsel for the wife, on the other hand, objected to his contentions, stating that the wife and children are still entitled for the maintenance and since the husband has not paid arrears of maintenance, he does not deserve any indulgence.

11 This Court, exercising its power under Section 482 Cr.P.C. cannot sit over into these disputed question of facts and determine, either the quantum or the liabilities. Section 127(2) of the Cr.P.C. entitles the husband to seek for alteration of the maintenance order made under Section 125 Cr.P.C. on the subsequent cause of action, when brought to its notice. While that being so, it would be appropriate to direct the parties to approach the same court, seeking for all the reliefs which they may be entitled to, including the relief of altering the order of maintenance as well as for enhancement of the claim and arrears.

12 In the result, both the criminal original petitions are disposed of in the following manner:

(1) The prayers in CrI.O.P.No. 25238 of 2013 and 20937 of 2015, seeking to set aside the orders passed in CrI.R.C.No.5 of 2011 and C.M.P.No.3185 of 2011, is rejected and the matter is remanded back to the learned Judicial Magistrate I , Tirupathur for the purpose of determining the applications of the parties.

(2) The husband is granted liberty to file application under Section 127(2), seeking for alteration of the maintenance within a period of one week from the date of receipt of a copy of this order.

(3) The petition filed by the wife and children in C.M.P.No.1091 of 2014 shall be taken up and disposed of along with the husband's application under Section 127(2).

(4) In case the learned Judicial Magistrate is of the view that the original order of maintenance requires alteration, it will be open to the learned Judicial Magistrate to do so without being influenced by the observations made in the earlier orders passed in revision.

(5) Both the husband as well as the wife and children are at liberty to file necessary Memo of calculations with regard to the maintenance already paid and the arrears and the same shall be considered by the learned Judicial Magistrate, while dealing with the applications filed by the parties under Section 127(1)

and 127(2).

(6) The learned Judicial Magistrate shall endeavour to dispose of the applications within a period of three months thereafter.

(7) The order of attachment, attaching the salary of the husband shall continue till the disposal of the applications. It is made clear that this Court has not expressed any of its views, with regard to the parties' entitlement for either alteration of the maintenance or for enhancement amount and that the decision shall be independently taken up by the learned Judicial Magistrate on the merits of the case.

13 With the above directions and observations, these criminal original petitions stand disposed of. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Judicial Magistrate-I,
Tirupatthur,
Vellore District.
2. Do Thro The Chief Judicial Magistrate
Vellore District.

+1 CC to Mr.P.S. Kothandaraman, Advocate sr 84647.
+1 CC to Mr.R. Venkatesan, Advocate sr 84855.

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CrI.O.P.No.25238 of 2013 & 20937 of 2015

SP(13/12/2017)