

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.Nos.29018 of 2012 & 16161 of 2013

and

M.P.Nos.1 of 2012 & 1 of 2013

Senthilkumar ...Petitioner in Crl.O.P.No.29018 of 2012

1. Akila
2. Minor LayashreePetitioners in Crl.O.P.No.16161 of 2013
(Represented by guardian / mother 1st petitioner)

Vs.

1. Akila
2. Minor Layashree ...Respondents in Crl.O.P.No.29018 of 2012
(Represented by guardian / mother 1st petitioner)

SenthilkumarRespondent in Crl.O.P.No.16161 of 2013

PRAYER in Crl.O.P.No.29018 of 2012: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order dated 16.02.2012 passed in Crl.R.C.No.50 of 2010 on the file of Principal Sessions Judge, Cuddalore, Cuddalore District and confirming the order dated 31.08.2010 passed in M.C.No.7 of 2008 before the Chief Judicial Magistrate, Cuddalore District.

PRAYER in Crl.O.P.No.16161 of 2013: Criminal Original Petition filed under Section 482 Cr.P.C. To call for the record relating to the order dated 14.02.2012 passed in Crl.R.C.No.50 of 2010 on the file of the Principal Sessions Court Cuddalore in modifying the order dated 31.08.2010 passed in M.C.No.7 of 2008 on the file of the Chief Judicial Magistrate Court, Cuddalore, set aside the same in so far as the same are against the petitioners.

For Petitioner : Mr.Saravanakumar
(in Crl.O.P.No.29018 of 2012)
For Petitioners : Mr.P.Mani
(Crl.O.P.No.16161 of 2013)

For Respondents : Mr.P.Mani
(in CrI.O.P.No.29018 of 2012)
For Respondent : Mr.Saravanakumar
(CrI.O.P.No.16161 of 2013)

COMMON ORDER

These petitions are filed by the husband as well as the wife, challenging the maintenance awarded as well as the enhancement respectively.

2 By an order passed in M.C.No.7 of 2008, the learned Chief Judicial Magistrate, Cuddalore had awarded a sum of Rs.5000/- per month as maintenance from November, 2009 to be payable by the husband. Challenging the same the wife and her minor child had filed the revision in CrI.R.C.No.50 of 2010, for enhancement and on 16.02.2012, the revision petition came to be allowed, modifying the monthly maintenance as Rs.7000/- for the child and Rs.2000/- for the wife.

3 Aggrieved against the orders, the husband as well as the wife and child have filed the present criminal original petitions. The learned counsel for the husband submits that the wife has now taken up an employment and therefore she would not be entitled for maintenance. He also stated that even prior to the government employment, the wife was privately employed. Countering the same, the learned counsel for the wife and minor child denied the employment and said that the amount awarded by the revisional authority was very reasonable and therefore sought for payment of the arrears as well as the monthly maintenance.

4 The issue as to whether the wife is employed as on date or not, cannot be gone into by this Court and it is for the trial court to arrive at such conclusion, based on the evidence produced before it. Like wise, the issue with regard to the employment of the wife prior to the government employment was already raised and considered by the trial court as well as the revisional court.

5 Nevertheless, in the light of the subsequent developments as alleged by the learned counsel for the husband, I am of the view that the issue can be remitted back to the trial court for fresh consideration.

6 Since the matter is being remanded back to the trial court on the issue of subsequent employment of the wife, it would be appropriate to grant an opportunity to both the wife as well as the husband to raise all points touching upon cancellation of maintenance awarded or for enhancement.

7 In the result, the order passed by the learned Principal Sessions Judge, Cuddalore in CrI.R.C.No.50 of 2010 is confirmed in so far as the minor daughter is concerned. The entitlement for maintenance for the wife is left open to the parties to agitate and they are granted liberty to approach the learned Chief Judicial Magistrate, Cuddalore, seeking enhancement / cancellation, for which purpose they may be permitted to let in fresh evidences also.

8 Accordingly, these criminal original petitions stand disposed of. Consequently, connected miscellaneous petition are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge,
Cuddalore, Cuddalore District.
2. The Chief Judicial Magistrate Court,
Cuddalore.
3. The Additional Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.SARAVANA KUMAR Advocate, S.R.No. 78373

+1cc to Mr.P.MANI Advocate, S.R.No. 78016

CrI.O.P.Nos.29018 of 2012 & 16161 of 2013

SAI (CO)
TR(23/11/2017)