



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C (MD) No.580 of 2017
and
Crl.M.P(MD)No.6442 of 2017

Ganesh Kumar

... Petitioner

Vs.

R.Rajini Devi

... Respondent

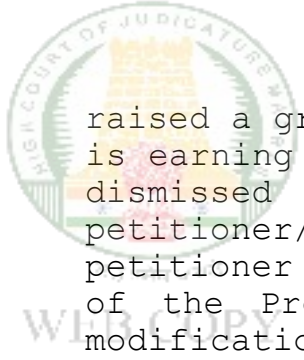
Petition filed under Sections 397 read with 401 Cr.P.C, to call for records pertaining to the impugned order dated 17.10.2016 passed in Cr.M.P.No.2224 of 2016 in M.C.No.11 of 2014 on the file of the Judicial Magistrate No.II, Srivilliputhur and set aside the same and allow the modification petition filed in Cr.M.P.No.2224 of 2016 in M.C.No.11 of 2014 on the file of the Judicial Magistrate No.II, Srivilliputhur.

For Petitioner : Mr.K.K.Kannan
For Respondent : Mr.R.Gandhi

ORDER

Challenging the order, dismissing the petitioner's application filed under Section 25 of the Protection of Women from Domestic Violence Act, 2005 the present Criminal Revision Case has been filed.

2.Earlier, the respondent/wife of the petitioner has filed an application in M.C.No.11 of 2014, on the file of the Judicial Magistrate No.II, Srivilliputhur, seeking maintenance. The Court below has allowed the petition and directed the respondent therein to pay Rs.35,000/- per month (Rs.10,000/- to the respondent/wife and Rs.25,000/- to the child) as maintenance. Challenging the same, the petitioner/husband has filed an appeal in C.A.No.92 of 2016 on the file of the Principal District Court, Srivilliputhur. The respondent/wife, being not satisfied with the quantum of maintenance, has filed C.A.No.93 of 2016. During pendency of both the appeals, the petitioner/husband has filed a petition in Cr.M.P.No.2224 of 2016, seeking modification of the earlier order on the ground that his salary has been reduced and hence he is not in a position to pay maintenance as ordered by the Court. He has also



raised a ground that the respondent/wife is also an employee and she is earning sufficient money to maintain herself. The Court below has dismissed the application holding that when the Appeal filed by petitioner/husband is pending before the lower appellate Court, the petitioner cannot maintain a petition filed under Section 25 of the of the Protection of Women from Domestic Violence Act, seeking modification.

3.I have heard Mr.K.K.Kannan, learned counsel for the petitioner and Mr.R.Gandhi, learned counsel for the respondent and perused the materials carefully.

4.The Court below has rightly dismissed the petition holding that the Appeal filed by the petitioner/husband is pending before the first appellate Court. I find no illegality or irregularity in the order passed by the Court below and hence, this Criminal Revision Case is liable to be dismissed.

5.In fine, this Criminal Revision Case is dismissed. However, since the appeal filed by the petitioner herein is pending from the year 2016, the Principal District Court, Srivilliputhur is directed to dispose of the appeal within a period of two months. The petitioner is permitted to adduce additional evidence it, as per law. Consequently, CrI M.P.(MD)No.6442 of 2017 is closed.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.II, Srivilliputhur.

2.The Principal District Judge, Srivilliputhur.

+ 1 CC TO Mr.K.K.KANNAN, ADVOCATE IN SR No. 66708

+ 1 CC TO Mr.R.GANDHI, ADVOCATE IN SR No. 66672

MJ

TE/SV/SAR-I : 31/07/2017 : 2P/5C

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20.07.2017