



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2017

CORAM

THE HONOURABLE **MR. JUSTICE V. BHARATHIDASAN**

Crl.R.C (MD) No.768 of 2016

WEB COPY

1. Tamilselvi

2. Minor. Swarithi

3. Minor. Nandhu .. Petitioners/Respondents/Petitioners

Minor 2nd and 3rd Petitioners

rep. by Mother and natural guardian P1

Vs.

M. Boominathan

... Respondent/Petitioner/Respondent

PRAYER: Criminal Revision Case is filed under Section 397(1) read with Section 401 of Cr.P.C., to call for the entire records relating to the order passed in Crl.R.C.No.01 of 2013, dated 31.08.2015 on the file of the learned Principal District and Sessions Judge, Sivagangai and to set aside the same by allowing this Criminal Revision Case and confirming the M.C.No.20 of 2007 order passed by the learned Judicial Magistrate, Manamadurai.

For Petitioners : Mr.K.C.Ramalingam

For Respondent : Mr.K.Vinayagam

ORDER

The revision has been filed against the order reducing the maintenance amount granted by the trial Court, by the Revisional Court. The first petitioner herein is the wife of the respondent. The marriage between the first petitioner and the respondent took place in the year 1994. Out of the wedlock, they are blessed with two children, who are the petitioners 2 and 3 herein. Alleging that the respondent deserted them and also failed to maintain them, and she is having no means to maintain herself and her children, they have filed a petition under Section 125(1) Cr.P.C., seeking maintenance in M.C.No.20 of 2007, on the file of the learned District Munsif-cum-Judicial Magistrate, Manamadurai and the trial Court ordered maintenance at the rate of Rs.2000/- to the first petitioner and Rs.1500/- each to the second and third petitioners, totally a sum of Rs.5000/- per month. Challenging the above order, the respondent filed a revision before the Principal District and Sessions Court, Sivagangai, the Court below partly allowed the revision reducing the maintenance amount to Rs.1000/- for first petitioner and Rs.500/- each for the second and third petitioners. Now, challenging the order present revision is filed.



2. I have heard Mr.K.C.Ramalingam, learned counsel appearing for the petitioners and Mr.K.Vinayagam, learned counsel appearing for the respondents and perused the records carefully.

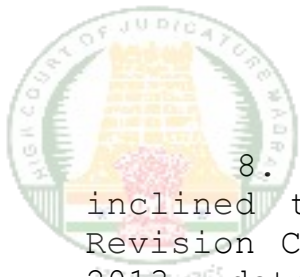
3.The learned counsel for the petitioners would contend that the respondent has sufficient means to pay maintenance, since he is a retired military man and getting pension; apart from that he is having house properties through which he has rental income and he is also owning an Omni van and deriving income by hiring it, whereas the petitioners have no other means, and the second and third petitioners are school going children, she is not able to pay their school fees. Without considering all these facts, the lower Appellate Court reduced the maintenance amount.

4. Per contra, the learned counsel for the respondent would contend that the petitioner is only getting pension of Rs.4000/-per month and apart from that he is no other source of income and from that pension amount, he is not able to maintain himself and his sick mother. Considering all those facts, the lower Appellate Court reduced the maintenance amount and hence there is no illegality in the order passed by the lower Appellate Court.

5. I have considered the rival submissions and the materials available on record.

6. It is an admitted case that the first petitioner is the wife of the respondent and the second and third petitioners are the daughter and son of the respondent. Hence, the respondent has a legal obligation to maintain them, both Courts have concurrently held that the first petitioner has a sufficient reason to live separately and also entitled to get maintenance. The case of the petitioners is that the respondent is a pensioner and he has also having house properties through which he is getting sufficient rental income and also having income through his Omni van and apart from that his mother is also a pensioner, he need not maintain her, and since the respondent is having sufficient income, the petitioners are entitled to get maintenance.

7. Even though the respondent claims that he is getting pension of Rs.4000/- per month, absolutely there is no material to substantiate his plea. The contention of the respondent that he is not having house property, and no material was produced to prove it. But, considering the fact that being husband of the first petitioner and father of the minor school going children/petitioners 2 & 3, the respondent has legal obligation to maintain them and educate his minor children, especially when he has means to maintain them. But the Court below, without considering all these materials and merely considering the counter <https://hccs.ccdns.gov.in/fusebox/> by the respondent, came to a conclusion that his income is only Rs.3000/- per month, thereby, reducing the maintenance amount is not legally permissible.



8. Considering the above facts and circumstances, I am inclined to allow this revision and accordingly, this Criminal Revision Case is **allowed** and the order passed in CrI.R.C.No.01 of 2013, dated 31.08.2015, by the learned Principal District and Sessions Judge, Sivagangai is set aside. The respondent is directed to pay a sum of Rs.2000/-, to the first petitioner and Rs.1500/-each, to the second and third petitioners, totally Rs.5000/- per month as maintenance, as directed by the trial Court from the date of filing of the maintenance petition and arrears, if any, shall be paid within a period of eight weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District and Sessions Judge, Sivagangai.
- 2.The District Munsif-cum-Judicial Magistrate, Manamadurai.
- 3.-Do thro' The Chief Judicial Magistrate, Sivagangai.

+1cc to M/S.K.C.RAMALINGAM, Advocate SR.No.77894

pjl

MAS/KP/SAR1:27.09.2017:3P-5C

CrI.R.C. (MD)No.768 of 2016
11.09.2017