

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2018

Coram

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.1554 of 2017 and
Crl.M.P.No.15658 of 2017

S.Sivaraj ...Petitioner/Appellant/1st respondent

vs

K.Kalaiselvi ... Respondent/Respondent/Petitioner

Prayer : Criminal Revision Petition filed under Section 397 read with 401 of the Code of Criminal Procedure praying to call for the records relating to the order passed in Crl.Appeal No.7 of 2016 on the file of District and Sessions Judge, Nagapattinam dated 31.10.2017 filed against the order dated 10.06.2016 passed in C.M.P.No.7098 of 2015 in M.C.No.29 of 2015 pending on the file of Judicial Magistrate, Sirkali and set aside the same and pass such further or other orders under the circumstances of this case and thus render justice.

For Petitioner : Mr.E.Narayanan
For Respondent : Mr.D.P.R.Prabhu
Legal Aid Counsel

Orders Reserved on	26.02.2018
Orders Pronounced on	10.04.2018

ORDER

The petitioner and the respondent are husband and wife and their marriage had taken place way back in the year 2013. Pursuant to the difference of opinion between them, the petitioner / husband had filed a petition in HMOP No.35 of 2015 before the learned Sub Judge, Chidambaram seeking divorce and the respondent / wife has preferred a case under the provisions of Domestic Violence Act in M.C.No.29 of 2015 before the learned Judicial Magistrate, Sirkali against the petitioner and his relatives. During the pendency of the maintenance case, the respondent has filed a petition in CMP 7098 of 2015 in M.C.No.29 of 2015 seeking interim maintenance. The learned Judicial Magistrate, Sirkali, upon consideration of both sides, directed

the petitioner / husband to pay interim maintenance of Rs.15,000/- per month to the respondent / wife, against which, the appeal preferred by the petitioner in Crl.A.No.7 of 2016 on the file of District and Sessions Judge, Nagapattinam also got dismissed. Aggrieved over the same, the petitioner / husband is before this Court, seeking modification of the maintenance amount.

2. Heard the learned counsel for the petitioner. There was no representation on behalf of the respondent / wife and therefore, on 13.02.2018, this Court appointed one Mr.D.B.R.Prabu as a Legal Aid Counsel to assist the Court. Perused the records.

3. Learned counsel for the petitioner has submitted that the petitioner had filed a petition for divorce in HMOP No.35 of 2015 on the file of the learned Sub Judge, Chidambaram and only thereafter, as a counter blast, the respondent / wife has chosen to file a Domestic Violence case in M.C.No.29 of 2015 against her husband and in-laws. It was submitted that both the petitioner and the respondent lived in Lakshwadeep and therefore, the question of harassment inflicted upon her by her in-laws does not arise at all.

4. Learned counsel for the petitioner further submitted that there was no police complaint previously against the petitioner and his parents by the respondent alleging cruelty, harassment or dowry demand and as such, levelling frivolous allegations, the respondent has filed the petition under Domestic Violence Act.

5. Learned counsel for the petitioner has stated that there was no cohabitation taken place between the petitioner and the husband, though both lived as husband and wife and the respondent has not fulfilled or performed her marital obligations.

6. It is also stated that the Trial Court has not taken into account the fact that the respondent is also earning as that of the petitioner, as she is working as Teacher and is independent to maintain herself, whereas the petitioner has to maintain himself and also his old aged parents as a dutiful son.

7. Learned Legal Aid Counsel appointed to advance argument on behalf of the respondent has contended that the respondent / wife was earning only meagre amount as salary, with which, she finds it very difficult to maintain herself and her parents. Moreover, she already quit the job and at present, she is jobless. Therefore, the interim maintenance as ordered by the Court below is perfectly valid in the eye of law and it does not warrant any interference by this Court.

8. On perusal of the averments raised in the petition, it is seen that the petitioner has been earning Rs.31,104/- per month as salary after deduction of amount towards loans obtained by him. Though the respondent / wife has stated that the monthly salary of her husband is Rs.1,20,000/- per month, she has not adduced any proof in order to substantiate her submission that it is a net salary. It is also an admitted fact that only as a counter blast, the respondent / wife has lodged the complaint under Domestic Violence Act without there being any previous police complaint preferred by her either against her husband or her in-laws in respect of causing cruelty or demand of dowry.

9. Though the learned Judicial Magistrate, Sirkakli, based on the salary slip produced by him, has come to the conclusion that the net salary of the petitioner comes to Rs.31,095/-, it was observed in the order that the deductions as stated in the salary slip are nothing, but the optional deductions and not the compulsory deductions except the deductions for the Income Tax and PF contribution. However, the Trial Court has failed to take note of the contention raised by the petitioner that there was no cordial relationship / cohabitation between the petitioner and the respondent since inception and the respondent has not performed her marital obligations at any point of time at all. Though it is obligatory on the part of the petitioner to provide good comfort to his wife, considering the fact that it is at the same time incumbent upon the petitioner to take care of his old aged parents, the fixation of interim maintenance of Rs.15,000/- is on the higher side and the same is liable to be modified.

10. In the result,

a) this Criminal Revision Petition is partly allowed;
b) the fixation of interim maintenance of Rs.15,000/- per month by the learned Judicial Magistrate, Sirkali in C.M.P.No.7098 of 2015 in M.C.No.29 of 2015 dated 10.06.2016, which was confirmed by the learned District and Sessions Judge, Nagapattinam in CrI.Appeal No.7 of 2016 dated 31.10.2017, is modified to Rs.5,000/- per month;

c) the petitioner is directed to pay a sum of Rs.5,000/- as monthly Interim Maintenance to the respondent from the date of filing the petition and continue to pay the same on or before 5th of every succeeding English Calendar month by way of demand draft or deposit in the respondent's Bank Account;

d) the petitioner is directed to pay the arrears of interim maintenance amount from the date of filing the petition till date by way of demand draft to the respondent, within a period of two weeks from the date of receipt of a copy of this order.

11. The assistance rendered by the legal aid counsel deserves the appreciation of this Court and the appreciation is placed on record. The remuneration is fixed at Rs.5,000/- which shall be paid by the Legal Services Committee, attached to this Court. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

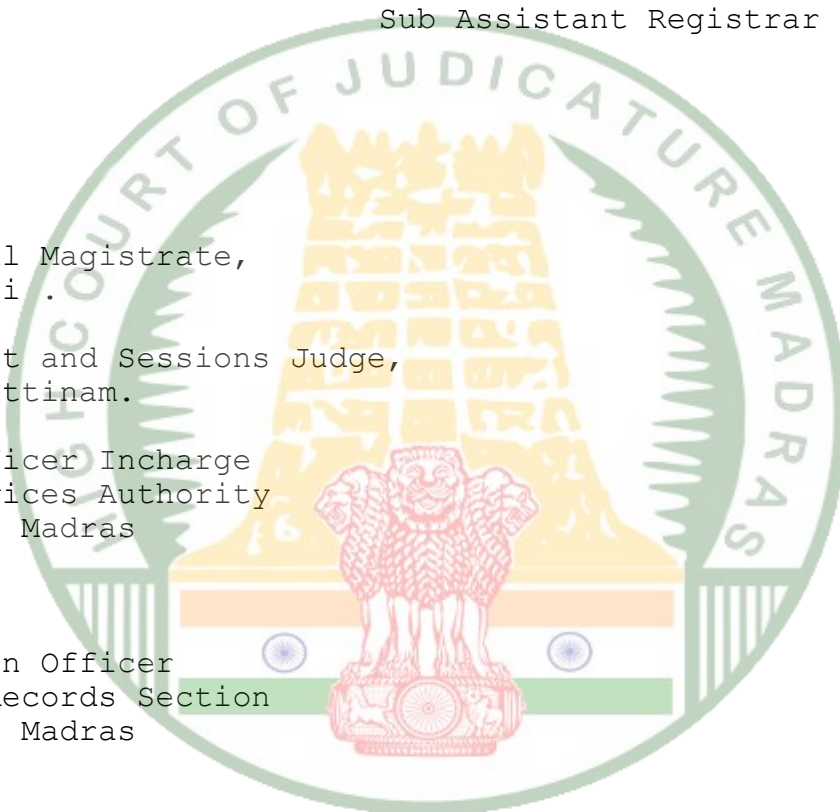
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To:

1. Judicial Magistrate,
Sirkali .
2. District and Sessions Judge,
Nagapattinam.
3. The Officer Incharge
Legal Services Authority
High Court Madras

copy to

The Section Officer
Criminal Records Section
High Court Madras



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Cr1.R.C.No.1554 of 2017

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