



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.1041 of 2013

1. S. Suganthi
2. S. Kousalaya (Minor)
3. S. Gayathri (Minor)
2 & 3 minors rep. by their mother
the first petitioner herein

...Petitioners/Petitioners

Vs.

R. Sivaji

...Respondent

Prayer: This Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure, to call for the records pertaining to the order in M.C. No.113 of 2007, dated 10.04.2013, on the file of the learned Additional Family Court, Chennai and to set aside the same and to award an enhanced compensation of Rs.20,000/- from the date of filing of the petition i.e. 20.02.2007.

For Petitioners : Mr.R.Selvakumar

For Respondent : Mr.R.Subramanian

O R D E R

The Revision Case has been filed to call for the records pertaining to the order in M.C. No.113 of 2007, dated 10.04.2013, on the file of the learned Additional Family Court, Chennai, to set aside the same and to award an enhanced compensation of Rs.20,000/- from the date of filing of the petition I.e. 20.02.2007.

2. The brief facts of the case are as follows :-

The respondent and the first petitioner are husband and wife. The second and third petitioners are minor daughters of them. Their marriage between the parties have taken place at Kancheepuram on 23.08.1991. After that, due to some misunderstanding, the first petitioner left the matrimonial home on 02.12.2004 and the spouses are living separately. The petitioners 2 and 3, minor daughters, are under the care and custody of the first petitioner. The respondent is Software Engineer and he is earning Rs.60,000/- per month. The petitioners sent a notice to the respondent in the year 2005.



However, he has not paid any maintenance amount to the petitioners. Therefore, the petitioners filed a petition before the Family Court under Section 125 Cr.P.C. to direct the respondent to pay the maintenance of Rs.20,000/- per month. The learned Family Court, after recording the evidence on both sides and also documents, that the respondent is an engineer and he has admitted that he is earning Rs.10,000/- per month. Considering the submission made by the respondent, the learned Family Court passed an order of maintenance at the rate of Rs.1500/- to each of the petitioners. As against the said order of the learned Family Court, the petitioners 1 to 3 filed the present revision for enhancement of the maintenance amount.

3. The learned counsel for the petitioners would submit that the respondent is an engineer and he is working in a German Company. Even at the time of filing the petition, seeking maintenance, the respondent was earning Rs.60,000/- The respondent has got a house property and he is having sufficient means. However, he has failed to maintain his wife and children. The children are now studying. The respondent has not paid any school fees to his children. The first petitioner is maintaining her minor children. Therefore, the order passed by the learned Family Court, is low and the same is liable to be enhanced.

4. The learned counsel for the respondent would submit that the respondent is not doing any work and he has got loan. Due to ill health of his old age mother, he is spending on her medical expenses. Therefore, he is not in a position to pay the maintenance amount more than the award passed by the learned Family Court, Hence, he prayed for dismissing the revision.

5. Heard the learned counsel for the petitioner as well as learned counsel for the respondent and perused the oral and documentary evidence.

6. The relationship between the parties is not in dispute and both the petitioners and the respondent are living separately. The main contention of the first petitioner is that the respondent is working as an engineer and earning Rs.60,000/- per month. Hence, the amount awarded by the Family court as maintenance is very low. According to the respondent, though he is an engineer graduate, now he is jobless and he is not having any means even to repay the bank loans.

7. Admittedly, the second and third petitioners are born to the first petitioner and the respondent. They are under the care and custody of the first petitioner. Therefore, the respondent is duty bound to meet their expenses to lead a decent life. Though the first petitioner has not proved income of the respondent, it is the duty of the respondent to prove what he is



actually earning. Under these circumstances, since the relationship is not in dispute and the 2nd and 3rd petitioners are under the care and custody of the 1st petitioner and considering the present day inflation and educational expenses, the maintenance amount is enhanced from Rs.1500/- to Rs.5000/- for the petitioners 2 and 3 and insofar as the 1st petitioner is concerned, the order of the learned Family Court is confirmed. In short, the respondent shall pay Rs.11,500/- [Rs.5,000X2 + Rs.1,500] as maintenance to the petitioners from the date of filing the petition.

10. The respondent shall deposit the arrears of maintenance within a period of three months from today. On such deposit being made, the petitioners are at liberty to withdraw the same.

11. In the result, this Criminal Revision is partly allowed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The IInd Additional Principal Judge,
The Additional Family Court,
Chennai.

+lcc to Mr.R.Subramanian, Advocate sr.75083
+lcc to Mr.R.Selvakumar, Advocate sr.74741

Crl.R.C.No.1041 of 2013

nr 30/08/2019