

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

CORAM:

THE HON'BLE MR.JUSTICE N. ANAND VENKATESH

Criminal Revision Case Nos.357, 358 and 359 of 2011

L.Priya @ Priya Bhuvaneswari ... Petitioner in all Crl.RCs.

..Vs..

V.Ramasamy ... Respondent in all Crl.RCs.

COMMON PRAYER: Criminal Revision Petitions filed under Section 397 read with 401 of the Criminal Procedure Code, to call for the records in M.C. No.1 of 2003 and CMP. Nos.1434 of 2010, 1588 of 2009 in M.C. No.1 of 2003 dated 02.12.2010 on the file of Judicial Magistrate, Sholingur and examine the correctness, legality of propriety of the order passed against the petitioner and revised the same.

For Petitioner : Mr.V.Govardhanan for
M/S.Row and Reddy in all Crl.RCs.

For Respondent : Mr.D.Ramalingam in all Crl.RCs.

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C O M M O N O R D E R

Crl.R.C. No.357 of 2011 has been filed by the petitioner/wife against the order passed in M.P. No.1434 of 2010. This petition was filed claiming for Travel Expenses. Crl.R.C. No.358 of 2011 is filed against the dismissal of M.P. No.1588 of 2009. This petition was filed by the petitioner claiming for enhancement of maintenance. Crl.R.C. No.359 of 2011 is filed aggrieved by the final order passed in M.C. No. 1 of 2003 only to the extent that the Court had directed the payment of maintenance from the date of the order instead of the date of the filing of the petition.

2.The Original Maintenance Case was filed by the petitioner in the year 2003, claiming for maintenance for herself and the minor child a sum of Rs.5,000/- each. After notice, since the respondent/husband did not participated in the proceedings, an exparte order was passed on 07.03.2003, fixing the maintenance as claimed in the petition.

3. Aggrieved by the exparte order, the respondent/husband filed Crl.O.P. No.20290 of 2003, before this Court and this Court by an order dated 03.12.2003, was pleased to dismiss this petition. Aggrieved by the same, the respondent/husband filed a S.L.P before the Hon'ble Apex Court and the Hon'ble Apex Court pending the S.L.P Directed the respondent/husband to deposit a sum of Rs.1,00,000/- (Rupees One Lakh only) towards arrears of maintenance before the trial Court. When the S.L.P was taken up finally, in order to afford an opportunity to the respondent/husband, the Hon'ble Apex Court directed the husband to deposit a further sum of RS.25,000/- (Rupees Twenty Five Thousand only) and remanded the matter back to the Magistrate Court to decide the case on merits after affording opportunity to both the parties.

4. It is reported that a sum of Rs.1,25,000/- (Rupees One Lakh and Twenty Five Thousand only) as directed by the Hon'ble Apex Court was deposited by the respondent/husband. It is also brought to the notice of the Court that the respondent has been paying a monthly maintenance amount of Rs.5,000/- per month as directed by the Hon'ble Apex Court till date.

5. The learned Magistrate took the matter for fresh hearing after remand. Evidence was let in by both the parties. The learned Magistrate on consideration of the materials placed before it was pleased to pass an order dated 02.12.2010, fixing the maintenance at Rs.5,000/- per month and directed the respondent to pay this maintenance amount from the date of the order. It is pertinent to note that during the interregnum, the minor child who was in the custody of the mother started living with the father and had also attained majority. Therefore, the learned Magistrate did not fix any maintenance insofar as the claim made for the son.

6. The learned Magistrate on the very same date i.e., on 02.12.2010 passed orders in C.M.P. No.1434 of 2010 and also in C.M.P. No.1588 of 2009. Insofar as the enhancement of maintenance claimed by the petitioner, the petition was dismissed on the ground that in view of the order passed in the main M.C, no further order can be passed in the petition seeking for enhancement of maintenance. Insofar as, Crl.M.P. No.1434 of 2010 is concerned, the learned Magistrate gave the very same reason to dismiss this petition filed claiming for Traveling Expenses.

7. The learned counsel appearing for the petitioner in all the three Revision Petitions would submit that the learned Magistrate ought to have ordered payment of maintenance from the date of filing of the petition and fell in error in directing the payment of maintenance from the date of the order. The

further contention of the learned counsel for the petitioner is that the M.C came to be filed in the year 2003, and after a long drawn legal process finally it came to be disposed of only in the year 2010 and therefore, the learned Magistrate ought to have taken into consideration the long number of years the petition was pending and ought to have ordered an enhanced amount as maintenance. The learned counsel further contended that the learned Magistrate went wrong in dismissing the other two Applications merely on the ground that orders were passed in the main M.C. It was further contended by the learned counsel for the petitioner that the child was in the custody of the petitioner till 06.03.2007 and therefore, maintenance should have been ordered atleast till that period.

8.Per contra, the learned counsel for the respondent would submit that a reasonable amount has been fixed as monthly maintenance by the learned Magistrate and he has been paying this amount regularly without fail. The learned counsel for the respondent further submits that even before final order came to be passed in the Maintenance Case in the year 2010, he had deposited a sum of Rs.1,25,000/-. Pursuant to the orders passed by the Hon'ble Apex Court and was also paying a monthly maintenance of Rs.5,000/- as directed by the Hon'ble Apex Court from the year 2006. The learned counsel therefore contends that taking into consideration the payment of money made by him during the interregnum, the learned Magistrate was right in ordering maintenance from the date of passing of order in the Maintenance Case. The learned counsel further submitted that he has been taking care of the child from the year 2007 onwards and he has aged parents to take care. The learned counsel lastly contended that he has retired from service in the year 2017 and he has to run his life by maintaining the child and aged parents with the meager pension apart from paying a monthly maintenance of Rs.5,000/- to the petitioner/wife.

9.This Court has considered the submissions made on either side and has also considered the materials placed. Admittedly, in this case the respondent/husband was working as DGM in REPCO Bank and therefore earning a decent salary. The relationship between the petitioner and respondent got strained which resulted in both the parties approaching the competent Court seeking for Annulment of the marriage and Restitution of conjugal rights and orders were passed in those petitions in the year 2006. Admittedly, the child is a spastic child and the petitioner had taken care of the child till March 2007. The petitioner must be aged about 55 years now.

10.The learned Magistrate at the time of deciding the Maintenance Case, took into consideration the employment of the respondent and also the salary that he was earning. The learned

Magistrate after appreciating the evidence of PW1 and PW2 came to a categorical finding that their evidences is acceptable and the ground taken by the respondent that the wife went away from the matrimonial house on her own volition was not correct. The learned Magistrate while fixing the maintenance took into consideration the salary certificate that was marked in the course of trial and also the admission made by the husband during the trial that the salary has increased to Rs.42,000/-. The learned Magistrate also took into consideration the loan amount that was being repaid by the husband and also the expenses incurred by him to maintain his parents and the spastic child. The Court after balancing the facts available before it, gave a categorical finding that the respondent/husband is in a comfortable position to maintain the petitioner/wife.

11.The learned Magistrate after taking into consideration the salary of the respondent as reflected in the salary certificate and also taking into consideration the increment in the salary that happened subsequently, ought to have fixed the maintenance amount. Apart from that, the learned Magistrate must have taken into consideration the long period of time spent in this proceedings which lasted nearly 7 years and should have taken into consideration the increase in cost of living.

12.The learned Magistrate went wrong in dismissing the petition for enhancement of maintenance by simply stating that since orders have been passed in the main M.C, no further orders are necessary in the enhancement petition. This findings is patently erroneous since the Magistrate did take into consideration the fact that the proceedings had dragged for nearly 7 years and even initially when the order was passed in the year 2003, the learned Magistrate had fixed a maintenance of Rs.5,000/- and to fix the very same maintenance amount after 7 years in the year 2010 in my considered opinion is erroneous. Even, if the learned Magistrate had taken into consideration the actual maintenance that was sought for by the petitioner in the petition and fixed it accordingly, the enhancement petition should have been dealt with independently and the maintenance amount should have been fixed by taking into consideration the increase in salary of the respondent, the time taken in the proceedings and also the increase in the cost of living.

13.This Criminal Revision has come up for final hearing in the year 2018 before this Court and the development that has happened during this period is that the respondent has retired from services and is only drawing pension. The present financial position of the respondent is not very clear.

14.Till today the relationship between the petitioner and the respondent as husband and wife is legally in force.

Therefore, the respondent is legally bound to maintain his wife. The amount of Rs.5,000/- fixed by the learned Magistrate in my considered opinion is not correct.

15. At this length of time this Court does not want to remand the matter back to the Magistrate Court to decide the enhancement of maintenance since the parties have already been fighting their case in Court for the last 15 years.

16. Taking into consideration the materials placed, this Court comes to a conclusion that a sum of Rs.7,500/- (Rupees Seven Thousand and Five Hundred only) can be fixed as monthly maintenance payable by the respondent to the petitioner. Since the respondent has been paying the maintenance of Rs.5,000/- right from the day directions were given by the Apex Court, the learned Magistrate was right in ordering the payment of the maintenance from the date of order. This enhanced amount of Rs.7,500/- payable every month will be effective from July 2018 and the same will be payable on or before 5th of every month by the respondent.

17. For all the reasons stated above, the Criminal Revisions are disposed of accordingly.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rkp

To

The Judicial Magistrate,
Sholingur.

+2ccs to M/S.Sudha Ramalingam , Advocate, S.R.No.37605

+1cc to M/S.Row and Reddy, Advocate, S.R.No.38387

Cr1. RC. Nos.357, 358 and 359 of 2011

SVI (CO)
CS/26/06/18