

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 25.07.2018]

[Pronounced on : 10.10.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.654 of 2018
and
Crl.M.P.No.7530 of 2018

Shivaji

... Petitioner

.. Vs ..

Sathiya alias Sathiya Bama

... Respondent

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C., against the order dated 04.04.2018 passed by the Family Court Judge at Vellore, in Crl.M.P.No.920 of 2017 in F.C.Crl.M.P.No.163 of 2014.

For Petitioner : Mr.R.Anbalagan

For Respondent : Mr.E.Kannadasan

ORDER

This Criminal Revision Case is preferred by the petitioner against the order dated 04.04.2018 passed by the learned Judge, Family Court, Vellore, in Crl.M.P.No.920 of 2017 in F.C.Crl.M.P.No.163 of 2014.

2. The petitioner is the husband of the respondent herein. The impugned order was passed by the learned Judge of the Family Court, Vellore, in Crl.M.P.No.920 of 2017 in F.C.Crl.M.P.No.163 of 2014 for collection of arrears of maintenance amount of Rs.2,88,000/- for the period from 29.08.2013 to 28.08.2017 by attachment of salary of the husband.

3. As against the said order of attachment of salary, the

husband has preferred this criminal revision case alleging that the order passed in F.C.Crl.M.P.No.163 of 2014 does not relate to his case and therefore, the same cannot be taken as yardstick for arriving at a conclusion to enhance the maintenance amount.

4. The learned counsel appearing for the respondent/wife submitted that the order passed in F.C.Crl.M.P.No.163 of 2014 was confirmed by this Court in Crl.R.C.No.799 of 2016.

5. This Court has considered the submissions made by the learned counsel on either side and perused the records.

6. After going through the order passed in F.C.Crl.M.P.No.163 of 2014 dated 26.02.2016 by the then District Judge, Family Court, Vellore, it is contended by the learned counsel appearing for the revision petitioner that in the order dated 26.02.2016 passed in F.C.Crl.M.P.No.163 of 2014 from para Nos.4 to 14, it does not relate to the case in dispute. Admittedly, the parties to this lis are Sathiya alias Sathiya Bama (wife) and E.Shivaji (husband). However, on a perusal of the order dated 26.02.2016 passed in F.C.Crl.M.P.No.163 of 2014, it is seen that from para No.4 it reads as if the wife's name is Shanthikala and she has deposed on behalf of herself as P.W.1 and marked documents. So also her husband namely, Arumugam was examined as D.W.1 and the facts and details of some other case have been typed in the said order dated 26.02.2016. Even the enclosure also indicates that the petitioner side witness is Shanthikala and documents are relating to her case, so also the respondent. At this juncture, the learned counsel appearing for the revision petitioner/husband drawn my attention to the actual case number viz., F.C.Crl.M.P.No.709 of 2015 dated 29.02.2016 and that was the case between A.Shanthikala (wife) and S.Arumugam (husband). On comparison of these two judgments dated 26.02.2016 and 29.02.2016, I find that para Nos.4 to 14 in both the orders including enclosures are one and the same.

7. In order to verify as to whether proper order was pronounced as required under law in this case, this Court called for the certified copy of the order passed in F.C.Crl.M.P.No.163 of 2014 and F.C.Crl.M.P.No.709 of 2015 from the present sitting Judge, Family Court, Vellore and on verification of the same, it is found that the impugned order produced before this Court and the certified copy sent by the learned Judge, Family Court, Vellore, are one and the same and hence, I find that in the order passed by the learned Judge, Family Court, Vellore, on 26.02.2016 in F.C.Crl.M.P.No.163 of 2014, the discussions and the operative portion do not belong to the above said case rather it is found to be cut, copy and pasted and the order is said to have been pronounced on the subsequent date namely 29.02.2016. Hence, I find that there is dereliction of duty on the part of the Presiding Officer namely Judge of the Family

Court, Vellore, in improper pronouncement of the judgment and the judgment pronounced in the other case in F.C.Crl.M.P.No.709 of 2015 appears to have been pasted in the operative portion of the order.

8. It is seen from the records that the present impugned order is filed under Section 128 of Cr.P.C. for realization of arrears of maintenance calculated as per the order passed in F.C.Crl.M.P.No.163 of 2014 dated 26.02.2016 and the same was the subject matter of the criminal revision in Crl.R.C.No.799 of 2016. This Court finds that the contention raised by the learned counsel for the revision petitioner/husband that the judgment, which has been confirmed in Crl.R.C.No.799/2016, does not relate to the case in hand namely F.C.Crl.M.P.No.163 of 2014, since the operative portions of the judgment and discussions in respect of evidence are relating to some other case is found to be valid.

9. For the discrepancy noted in the preceding paragraphs, this Court called for an explanation from the concerned Judicial Officer and the same has been dealt with on the administrative side separately. Since the above discrepancy was not brought to the notice of this Court on an earlier occasion which has led to the passing of an order of this Court in Crl.R.C.No.799 of 2016 and in the interest of justice, the following order is passed.

10. In the result,

[i] this Criminal Revision Case is allowed.

[ii] The order dated 04.04.2018 passed by the Family Court Judge, Vellore, in Crl.M.P.No.920 of 2017 is hereby set aside.

[iii] For the reasons stated in the preceding paragraphs, the earlier order passed by this Court in Crl.R.C.No.799 of 2016 is recalled for the reasons recorded therein and the order as given in the certified copy said to have been passed in F.C.Crl.M.P.No.163 of 2014 is set aside and the matter is remitted back to the Family Court and the learned Judge, Family Court, Vellore, is hereby directed to hear both the parties upon the evidence already recorded and available therein and to pass fresh orders based upon the evidence as such available on record in F.C.Crl.M.P.No.163 of 2014 within a period of eight weeks from the date of receipt of a copy of this order. Both the learned counsel are directed to co-operate for the disposal of the case in F.C.Crl.M.P.No.163 of 2014 within the time limit as

stipulated above.

[iv] The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

Jr1

To

The Judge,
Family Court,
Vellore.

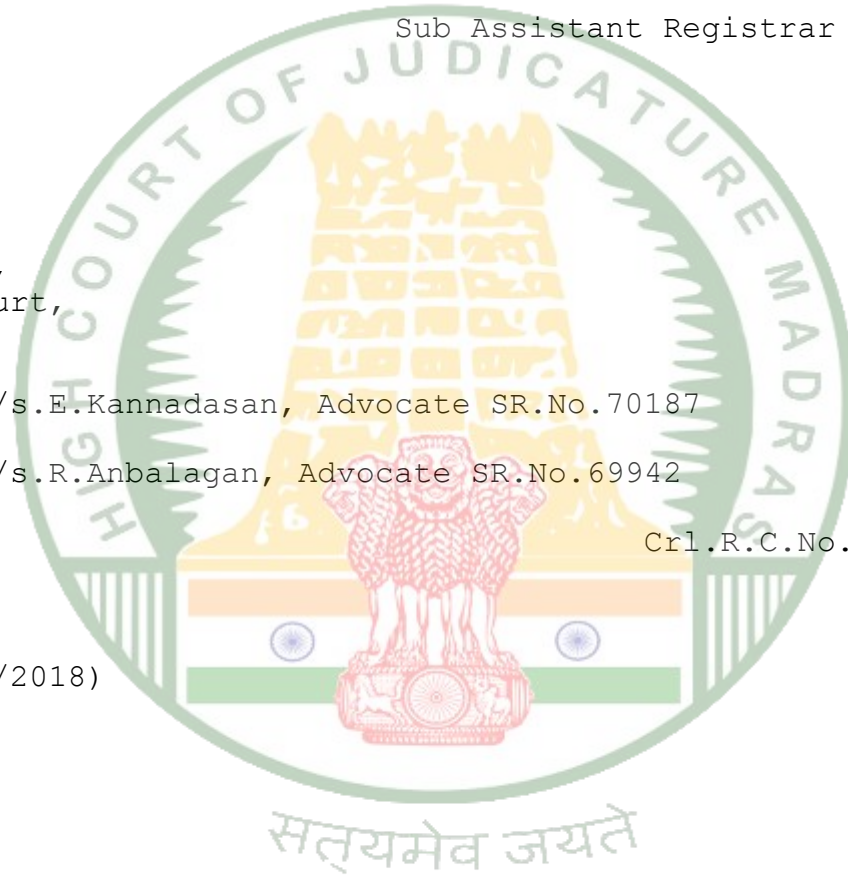
+1cc to M/s.E.Kannadasan, Advocate SR.No.70187

+2cc to M/s.R.Anbalagan, Advocate SR.No.69942

Cr1.R.C.No.654 of 2018

MP (CO)

GMV (02/11/2018)



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