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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.04.2018

CORM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.R.C.NO.929 OF 2010

1. H.Zahara Bi

2. S.Sabreen

.. Petitioners

Vs.

P.H.Meer.Muhammed Liyakathullah

.. Respondent

Criminal Revision filed Under Section 397 and 401 of Criminal Procedure Code to call for the entire records in connection with the order dated 04.05.2010 passed in M.C.No.44 of 2006 on the file of Family court, salem and set aside the same in so far as it is against the petitioners and enhance the maintenance amount as prayed for by the petitioners.

For Petitioners : Mr.N.S.Ganesh
for Mr.A.V.Somasundaram

For Respondent : Mr.Gopalakrishnan
for MR.R.Nalliyappan

order

Being aggrieved over the order passed by the Judge, Family Court, Salem in M.C.No.44 of 2006 dated 04.05.2010. The petitioners on this Revision praying to enhance the quantum of maintenance fixed by the above said court in M.C.No.44 of 2006. in the trial court, the revision petitioner are the Petitioners. They filed an application u/s.125 Cr.P.C in which, she claiming maintenance from the respondent, who is the husband of the first petitioner. After elaborate enquiry, the trial court directed the respondent to pay Rs.3000/- per month to the first petitioner and Rs.1500/- per month to the Second petitioner as maintenance amount. Now this Application has been filed for enhancing the said maintenance amount.

2. Admittedly, the first petitioner is the Wife of the



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respondent. The Second petitioner is the Child born to the first petitioner and the respondent. In the trial court, the marriage happened between the first petitioner and the respondent, paternity of the second petitioner are all admitted. In the counter, the respondent categorically mentioned that he is not interested to live with the first petitioner. So, the said contention alone shows only because of the attitude of the respondent, the first petitioner left the matrimonial home with the second petitioner. Further, it is hold in the trial court that the Marriage between the first petitioner and the respondent was dissolved by way of saying "Muthalak". But, the said fact was disputed by the petitioner, by way of sending Advocate notice in which, the petitioner categorically mentioned that the marriage is not broken between them, by way of telling the "Muthalak". Now, on go through the order passed by the trial court, it was clearly held that the marriage of the first petitioner has not legally dissolved by the competent court or by customary method.

3. However, on going through the provisions u/s.125 Cr.P.C., even the divorced woman is entitled for getting the maintenance under the said provision. So, in this revision it is not necessary to decide whether the marriage happened between the first petitioner and the respondent is still in subsistence or not.

4. Having regard to the quantum of maintenance fixed by the trial court, the learned counsel appearing for the petitioner contended that considering the prevailing situation and cost of living, maintenance fixed by the trial court is very very meager and further, he added the second petitioner here, who is studying in the college for which, much amount is necessary for completing her studies. Further more, he contended that the respondent was working as a Government Servant and earned Rs. 17, 500/- at the time of filing petition in 2010. On the other hand, the learned counsel appearing for the respondent made a submission that the respondent is having the duty to maintain their parents, pay the house rent and further he needed some of the amount for his personal expense. So, the amount arrived by the trial court is not needed any modification.

5.Considering the rival submission made by the counsel, it is true that during the time of giving evidence, the respondent as R.W.1, he deposed that he spends some amount towards his mother medical expenses. On the other hand, he admitted that his mother received a pension from the Government. So, the said evidence shows that the mother of the respondent is well placed and she is having the sufficient income for maintaining herself.

6.Further the respondent says in his evidence as the



maintenance of Rs.20,000/- was paid only towards the expenses borne out of studies of the second petitioner. That evidence shows that the respondent is not paid any maintenance till filing this revision petition, that as ordered by the trial Court.

7. In a proceedings initiated under the provision of 125 Cr.P.C, it is the duty of the husband to prove that his wife and the daughter or son having the sufficient means to maintain themselves. The burden is rest only on the respondent. Without proving the said aspect, mere evidence that the wife is earned much money is not a ground to considering the case of the respondent. In this case, the salary certificate of respondent was marked as Exs.R8 and R9 According to Ex.R9, respondent received a gross salary of Rs.22,328/- which is approximately now Rs.75,000/- in the year 2018. More over, in the evidence of respondent, he admitted that the first petitioner avail a loan for the expenses towards the studies of the Second petitioner.

8. In the instant case, the evidence of respondent would reveal that he is having sufficient means to maintain the petitioners and also the petitioners are not in position to maintain themselves. It is true that the fixation made by the trial court now compared with the cost of living is very meager. In the interest of justice, I hold that being the Government servant and compare the salary received in 2010, there may be a possibility for receiving Rs.60,000/- as of now.

9. Accordingly, the Revision petition partly allowed. The Maintenance amount fixed by the trial court is modified to the extend that the respondent is directly to pay Rs.10,000/- per month to each petitioner from the date of filing this Revision Petition.

Mfa(23.04.2018)

This matter having been listed under the caption for being mentioned on 26.04.2018 pursuant to the order of this court dated 23.04.2018 and made herein in the presence of the aforesaid counsels on the either side. The court made the following order.

Today, this Criminal Revision Petition is listed under the caption 'for being mentioned'.

2. Both the learned counsel for the revision petitioners and the learned counsel for the respondent are present and the learned counsel for the respondent made a submission that the dispute between the revision petitioners and the respondent is going to be settled by way of settling a property in favour of the second petitioner.



3. The submission made by the learned counsel for the respondent is recorded.

4. The order passed by this Court, dated 23.04.2018 is recalled.

5. Post the matter on 07.06.2018 under the caption "For reporting settlement".
Ak(26.04.2018)

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

TO

THE JUDGE, FAMILY COURT, SALEM.

COPY TO

THE SECTION OFFICER (POSTING CLERK)
CRL SECTION, HIGH COURT.

+1cc to Mr.A.V.SOMASUNDARAM, Advocate, S.R.No.30175

CRL.R.C.NO.929 OF 2010

TR(21/05/2018)