

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 13.11.2018

CORAM

THE HONOURABLE THIRU JUSTICE V.PARTHIBAN

CRL.REVISION CASE NOS.1371 OF 2017 & 161 OF 2018
AND CRL.M.P.NO.13356 OF 2017 & 1313 OF 2018

S.Rajaseelan @ Harish Kumar .. Petitioner in
both petitions

versus

1. R.Malathi .. 1st Respondent in
both petitions

2. R.Priyadharishini (minor)
represented by her mother and natural
guardian, 1st respondent .. 2nd respondent
in both petitions

3. The Accounts Officer,
Chennai Port Trust, Rajaji Salai,
Chennai-600 001 .. 3rd Respondent
in Crl.RC 161/18

Prayer in Crl.R.C.No.1371 of 2017:

This Criminal Revision Case is filed under Section 397 r/w
401 Cr.P.C., seeking to call for the records pertaining to the
order passed in M.C.No.22 of 2016 dated 03.08.2017 on the file
of the Judicial Magistrate Court, Ambattur and set aside the
same.

Prayer in Crl.R.C.No.161 of 2018:

This Criminal Revision Case is filed under Section 397 r/w
401 Cr.P.C., seeking to call for the records pertaining to the
order dated 20.12.2017 in Crl.M.P.No.3704 of 2017 in M.C.No.22
of 2016 passed by the Judicial Magistrate, Ambattur and set
aside the same.

For Petitioner : Mr.Kaviyanathan for
in both petitions M/s.Nathan and Associates

For Respondents : Mr.T.Muruganantham
1 & 2 in both
petitions

COMMON ORDER

Since both the above captioned Criminal Revision Cases are inter-related and arose out of the same subject matter in M.C.No.22 of 2016, the same are taken up together and being disposed of vide this common order.

2. For the sake of convenience, the parties are hereinafter referred to as their nomenclature mentioned in Crl.R.C.No.1371 of 2017.

3. The brief facts of the case are that the first petitioner, Mrs.R.Malathi is the wife of Mr.S.Rajaseelan @ Harikumar, the respondent, and the second petitioner is their daughter. After marriage and birth of the second petitioner, matrimonial disputes arose between the couple, which led to the filing a petition for maintenance in M.C.No.272 of 2005 before the Family Court by the first petitioner/wife, seeking alimony for herself and her daughter, which was allowed and a sum of Rs.16,000/- for both the petitioners was ordered to be paid by the respondent towards maintenance. Thereafter, the respondent filed a petition in OP No.1863 of 2006 for divorce, which was dismissed in the year 2011. As against the order of maintenance and dismissal of divorce petition, the respondent filed a revision in Crl.R.C.No.991 of 2013 as well as appeal in C.M.A.No.2738 of 2012 respectively before this Court, which were referred to before Mega Lok Adalath, where the matter was settled since both the parties agreed to reunion and live together and accordingly an award was passed whereby the above said CMA No.2738 of 2012 and Crl.R.C.No.991 of 2013 were closed. Thereafter, it appears that they started living together only for 15 days and again disputes arose between the parties.

4. According to the first petitioner/wife, the respondent/husband used to stay out side without returning to home and when she questioned this, he scolded her in filthy language and threatened to kidnap second petitioner and also insisted her to pay rent and subjected her to harassment, which prompted the first petitioner to leave the matrimonial home and started living with her parents separately. While according to the respondent/husband, he took a house on rent to live with the petitioners and taking care of both the petitioners and at the insistence of the first petitioner, he also alienated the property in the name of her uncle. However, all of a sudden, without intimation, the first petitioner left the matrimonial home and also changed her phone numbers and he did not know where they had gone.

5. It appears that the petitioner moved a petition in M.C.No.22 of 2016 before the Court below, seeking maintenance of

Rs.20,000/- for herself and Rs.15000/- for her daughter since the respondent failed and neglected to maintain and look after them. Resisting the petition, the respondent filed a counter, wherein, he stated that he or his parents never ill-treated the petitioner and the petitioner conceived twice and got aborted and she was suffering from incompetent Cervix. However, the respondent is taking much care of the petitioner and he took her to several hospitals and later, the petitioner gave birth to second petitioner and when the respondent went to the hospital to see his daughter, he was pushed out of the hospital by the members of the petitioner family and despite the request made by the respondent to come and live with him, the petitioner never turned up. Therefore, the respondent sought for dismissal of the maintenance petition.

6. The Court below, on consideration of both oral and documentary evidence, allowed the petition and taking note of the fact that the respondent is an employee of Port Trust, earning Rs.70,000/- per month, directed the respondent to pay Rs.15,000/- to the first petitioner and Rs.5,000/- to the second petitioner towards maintenance per month and also directed him to pay school fees for the second petitioner for every academic year. Aggrieved by the same, the respondent filed the present Crl.Revision Case No.1371 of 2017.

7. While pending the above said revision before this Court, since the respondent failed to pay the maintenance in compliance of the order of the Court below, the first petitioner moved a petition seeking a direction to the Garnishee of the respondent to attach the salary. Despite service of notice, the respondent had not chosen to appear nor to file counter, the Court below ordered the petition ex parte and directed to issue warrant for salary attachment. Aggrieved by the same, the respondent filed the present Crl.Revision Case No.161 of 2018.

8. Heard the learned counsel for the petitioners and the respondent and perused the entire materials available on record.

9. It is not in dispute that on earlier occasion, the matter was referred to Mega Lok Adalath, where both parties appeared and settled their dispute amicably by agreeing for reunion and recording the same, both the cases, viz., the appeal and revision preferred by the respondent as against the dismissal of divorce petition and the order of the Court below directing him to pay maintenance, came to be closed. It is the specific case of the petitioner/wife that in pursuance of the award passed by the Lok Adalath, they started to live together only for 15 days and thereafter, again the respondent started to ill-treat the petitioner by staying away without returning to home and when this was questioned, he scolded her in filthy language and threatened to kidnap the second petitioner, which prompted the

petitioner to leave the matrimonial home. It is pertinent to note that even according to the respondent, as averred in the counter affidavit in para 11, that they lived peacefully for some days, but one day without even informing the respondent, the petitioner took her daughter and left the home and immediately she changed phone numbers and that there is no connection between him and the petitioners for the past two years. This would show that the respondent is least bothered about departure of the petitioners from the matrimonial home and thereafter, he did not even make any attempt to enquire them and take steps to find out their whereabouts and bring them home. In fact, the Court below has taken note of this attitude of the respondent and observed that any prudent man will not keep quiet when his wife and child had gone out of the house without any intimation. Apart from this, it is pertinent to note that on earlier occasion, there was an order passed against him by the Court below, directing him to pay the maintenance, against which, he filed a revision and also as against the dismissal of O.P. filed for divorce, he filed an appeal and when both of the cases were pending, he cleverly accepted for disposal of the matters before the Lok Adalath and after closure of the matters, the respondent just lived for 15 days and again started to abandon the petitioners and thereby, made the earlier order of maintenance ineffective, which again prompted the petitioner to come forward with a fresh petition for maintenance, which was rightly allowed by the Court below. Even in his counter affidavit, in para 11, the respondent has clearly stated that the petitioner took her daughter and went away and immediately phone numbers were changed and there is no connection between both of them for the past two years, i.e. on the date filing of the counter. Therefore, by this, it is clear that the respondent has not taken any steps to even trace out or to find out whereabouts of the petitioners. This conduct of the respondent has been highlighted by the Court below by stating that any prudent man would not keep quiet when his wife along with the child left the matrimonial home without any intimation. Therefore, the contention of the respondent that the petitioner herself left the matrimonial home voluntarily, cannot be accepted. Further, the respondent has not proved with any clinching material all his contentions, viz., that the petitioner's plan is to swindle the property of the respondent and at her insistence, he executed a sale deed in favour of her uncle and that the petitioner is earning money by real estate business and that he spent 8,00,000/- for setting up a new house for the welfare of the petitioner and her daughter, etc. As regards execution of the sale deed by the respondent in favour of the uncle, the Court below has rightly pointed out that the conveyance was done by duly executing the sale deed for a valid consideration and that if at all it is true, then what is the necessity for the respondent to execute the deed in favour of

uncle of the petitioner instead of her. As regards fixing the quantum of the maintenance, the Court below has taken note of Ex.R8, pay drawn particulars, which establishes that the respondent takes Rs.42,497/- after deductions, which includes towards festival advance and hence, the Court below came to the conclusion that the respondent was drawing Rs.70,000/- per month towards his salary and on that basis, awarded Rs.15,000/- and Rs.5000/- for both the petitioners respectively and also directed the respondent to pay school fees of the 2nd petitioner for every academic year.

10. In view of the above discussion and factual aspects of the matter, this Court does not find any scope to interfere with the order passed by the Court below.

11. It is to be noted that though the Court below passed the order, directing the respondent to pay monthly maintenance to the petitioners as early as on 3.8.2017, however, the respondent has not complied with, the petitioner was constrained to move a petition for ordering attachment of the salary and despite service of notice, the respondent had not chosen to appear nor to file counter, the Court below ordered the petition ex parte and directed to issue warrant for salary attachment. Now in view of the dismissal of the Revision Case filed against the order of maintenance, there is no scope to entertain the present revision case, which has been filed against the order of attachment.

12. In the result, both the Criminal Revision Cases fail and they are dismissed as devoid of merits. Consequently, connected CrI.MPs are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

suk

To

1. The Judicial Magistrate, Ambattur.

2. The Accounts Officer,
Chennai Port Trust, Rajaji Salai, Chennai-1.

+1cc to M/s.Nathan and Associates, Advocate, S.R.No.77601

+1cc to Mr.T.Muruganantham, Advocate, S.R.No.77561 (05/03/2019)

CRL.R.C.NOs.1371 of 2017
& 161 of 2018

SAI (CO)
CS/04/03/2019