

IN THE HIGH COURT OF JUDICATURE AT MADRAS

04.12.2018

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

Crl.R.C.Nos.813 of 2017 and 115 of 2018
and
Crl.M.P.No.7612 of 2017

G.Ramesh Babu

.. Petitioner in
Crl.R.C.No.813 of 2017
Respondent in
Crl.R.C.No.115 of 2018

Vs

1.R.Radhika

2.R.Manushree

rep.by mother 1st respondent .. Respondents in
Crl.R.C.No.813 of 2017
Petitioners in
Crl.R.C.No.115 of 2018

Criminal Revision Cases preferred against the order dated
27.03.2017 passed in M.C.No.7 of 2014, by the Judicial
Magistrate, Tambaram, Kancheepuram District.

For Petitioner
in Crl.R.C.No.813 of 2017
and for Respondent
in Crl.R.C.No.115 of 2018: Mr.J.Saravanavel

For Petitioners
in Crl.R.C.No.115 of 2018
and for the Respondents
in Crl.R.C.No.813 of 2017: Mr.T.R.Ravi

COMMON ORDER

These Criminal Revision cases are directed against the
order dated 27.3.2017 passed in M.C.No.7 of 2014, by the
Judicial Magistrate, Tambaram.

2.The facts give rise to the filing of the present revision
cases are stated as under:

(a) The respondents in Crl.R.C.No.813 of 2017 filed M.C.No.7 of 2014 as against the revision petitioner herein (G.Ramesh Babu) seeking maintenance. Whereupon the revision petitioner entered appearance and contested the matter.

(b) During enquiry, the first respondent herein examined herself as P.W.1 and Exs.P1 to P8 were marked. On the side of the revision petitioner (husband) no one was examined and no document was marked.

(c) Ultimately, the Family Court awarded maintenance in a sum of Rs.30,000/-per month, i.e. Rs.15,000/- to the wife and Rs.15,000/-per month in favour of the child, payable by the husband.

3. Being aggrieved by the order of the Family Court, the husband filed Crl.R.C.No.813 of 2017 on various grounds, which could be briefly narrated as under:

The Court below erred in fixing a sum of Rs.30,000/- as maintenance without any materials. It failed to take into consideration that the wife is also well qualified, as she completed her M.Sc., M.Phil., and P.Hd., and can earn sufficiently. The Court below also failed to take into account the evidence available on record that it was the wife who was responsible for the rift in the matrimonial relationship and she only lodged a false compliant as against the husband and his family members. The Court below wrongly arrived at the conclusion that a sum of Rs.9,00,000/- left the bank account of the husband, which represents his salary. At the same time, the Court below failed to take into account the bank balance left in the account of the wife. The fact of the age old parents of the husband completely depending on him, was not taken note of by the Court below. Therefore, the Family Court was not justified in mulcting the husband with the liability to pay maintenance and the maintenance awarded is also on the higher side.

4. Similarly, the wife filed Crl.R.C.No.115 of 2018, seeking enhancement of maintenance awarded by the Family Court, inter alia contending, among other things, as follows:

The Family Court ought to have ordered a sum of Rs.50,000/- as maintenance to her and her child, as claimed in their petition. The Court below has not taken into consideration the salary receipt of the husband (produced and marked as Ex.P5) and the fact that he was working as a Project Manager in a reputed concern, viz., Cognizant Company and was earning a sum of Rs.1,50,000/- per month. The Court below has also not taken into consideration the health condition of the

wife, who is a diabetic patient and is spending a sizable amount towards medicine and the educational expenditure incurred towards the child. The husband is also owning properties, which were not taken note of by the Family Court. The wife is not working anywhere and it is also impossible to get a job due to passage of time and age limit. The quantum of amount awarded by the Family Court is very low, with which the wife cannot meet the minimum expenses required for maintenance of herself and her child.

5. The question which falls for consideration is as to whether there is any perversity or non application of law in awarding the maintenance and whether there is any inequity in awarding the quantum of maintenance.

6. The learned counsel for the revision petitioner in CrI.R.C.No.813 of 2017 would submit that the Family Court, without analysing as to who is responsible for the cleavage in the matrimonial relationship between the revision petitioner/husband and the first respondent/wife, simply awarded exorbitant amount towards maintenance.

7. Similarly it is the contention of the learned counsel appearing for the wife (petitioners in CrI.R.C.No.115 of 2018) that the maintenance awarded by the trial Court is too low and with the said amount, in this present day cost of living, the wife and the daughter cannot lead a decent life.

8. A plain reading of the judgment of the Family Court as well as the records would disclose that the revision petitioner in CrI.R.C.No.813 of 2017 and the first respondent got married on 12.12.2006, as per the Hindu Rites and Customs. Out of their wed lock, R1 gave birth to R2, on 14.01.2009. According to R1, there was cruelty and harassment on the part of the husband and in connection with that, a criminal case also emerged and the same is still pending.

9. It is well settled proposition that when the parties are locked up in criminal litigation, only before the criminal Court those contentious issues could be decided and adjudged. In the summary proceedings under Section 125 of Cr.,P.C., the larger issues relating to who is absolutely responsible for the rift in the matrimonial relationship could not be decided.

10. In summary proceedings under Section 125 of Cr.P.C. the Court has to see whether there is negligence on the part of the husband in maintaining the wife and child. In the case on hand, the husband would say that he was not responsible for the rift, as the wife, on her own accord, left the matrimonial home. However, the Family Court felt that there is no substance, prima

facie, in the contention of the husband that the wife, on her own accord left the matrimonial home, as it is the husband, who filed the divorce petition. Without any rhyme or reason R1 could have no reason to live away from the husband and seek for maintenance. Considering the fact that the Family Court, on factual basis arrived at the conclusion that the husband has to pay maintenance, this is not a fit case for interference in the revision.

11.It is a settled principle of law that the revisional court is not expected to interfere with the finding given by the court below, unless there is any perversity or non-application of law on the part of the court below.

12.Regarding quantum is concerned, the Family Court has taken into consideration the contention of the husband that he was earning Rs.1,10,000/- per month and with the said amount he has to pay rent; meet out his parents medical expenses and also a sizable amount is paid towards repayment of loan taken in the bank and as such, he will not be in a position to pay maintenance to the wife. Similarly the Family Court has taken into consideration the contention of the wife that though she is well qualified, due to mental stress, paucity of time, age and also as a dutiful mother, she has to take care of the child, she was not in a position to go for any work. Ultimately, the Family Court taking into consideration the contentions raised on both sides and after analysing the materials placed before it, has awarded a sum of Rs.30,000/-, at the ratio of Rs.15,000/- to the wife and Rs.15,000/- to the child.

13.The argument of the learned counsel for the husband that the husband is not in a position to pay the maintenance as awarded by the Family Court cannot be countenanced for the reason that a male should part with a reasonable amount from his income in favour of his wife and child and he cannot appropriate more for himself and leave his wife and child in the lurch and make them to languish in a cash strapped circumstance. This Court has also taken into consideration the fact that the child is hardly 9 years old and the wife has to incur lot of expenses towards her educational and other expenses and therefore, the amount of Rs.15,000/- awarded by the Family Court, in favour of the child, cannot be said to be on the higher side. Similarly, the amount of Rs.15,000/- awarded to the wife also is not excessive, as it a common principle that no person could live in the present day cost of living, without even spending a sum of Rs.500/- per day. Hence, I could see no perversity or non-application of law in awarding such maintenance by the lower Court.

In fine, these Criminal Revision Cases are dismissed.
Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

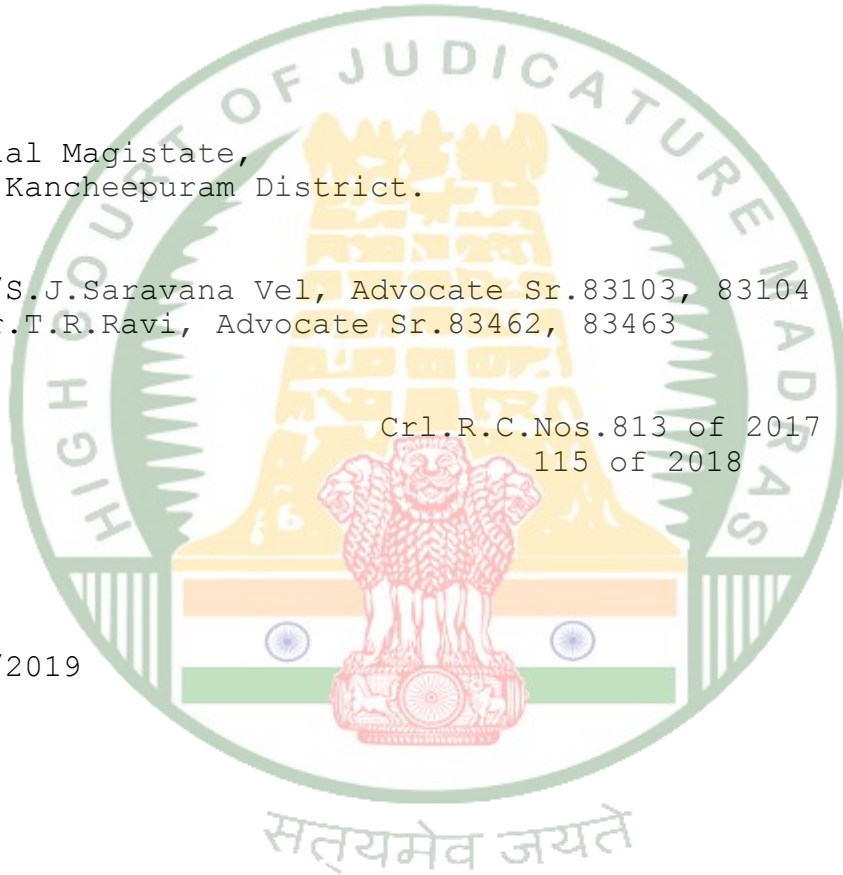
msh
To

The Judicial Magistrate,
Tambaram, Kancheepuram District.

+2cc to M/S.J.Saravana Vel, Advocate Sr.83103, 83104
+2cc to Mr.T.R.Ravi, Advocate Sr.83462, 83463

Crl.R.C.Nos.813 of 2017 and
115 of 2018

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