



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.R.C.(MD) No.34 of 2018
and
Cr1.M.P.(MD) No.370 of 2018

Dinakaran

... Petitioner / Respondent

vs.

1.Uma Maheshwari

2.Minor.Vidhyalakshmi

(R2 rep.by her Guardian R1)

... Respondents / Petitioners

PRAYER: Criminal revision filed, under Section 397 r/w 401 Cr.P.C., to call for the records pertaining to an exparte order passed in M.C.No.4 of 2014, dated 07.06.2016, on the file of the District Munsif Court-cum-Judicial Magistrate Court, Kodaikannel, Dindigul District and quash the same.

For Petitioner : Mr.R.Murugappan

For Respondents : Mr.S.Anand Chandrasekar
for M/s.Sarvabhauman Associates

O R D E R

For the sake of convenience, the parties are referred to by their name in this order.

2. Uma Maheshwari got married to Dinakaran on 14.06.2010 and they have one child - Vidhyalakshmi through the wedlock. On account of matrimonial discord, the couple got estranged resulting in Uma Maheshwari filing M.C.No.4 of 2014, before the learned District Munsif-cum-Judicial Magistrate, Kodaikanal, under Section 125 Cr.P.C., against Dinakaran claiming monthly maintenance at the rate of Rs.15,000/- for herself and her child. After notice, Dinakaran entered appearance, but he did not prosecute the case and therefore, an ex parte order of maintenance was passed in favour of Uma Maheshwari. Thereafter, Dinakaran filed an application for setting aside the ex parte order, which was allowed by the Trial Court and the matter was contested. On behalf of Uma Maheshwari, she examined herself as P.W.1 and marked four exhibits. On behalf of Dinakaran, no witness was examined and no exhibit was marked. The learned



Trial Judge, by the impugned order dated 07.06.2016, awarded monthly maintenance at the rate of Rs.5000/- each (totally Rs.10,000/-). Aggrieved by the same, Dinakaran has filed the present revision with a delay of 353 days, which has been condoned by this Court by order, dated 17.01.2018.

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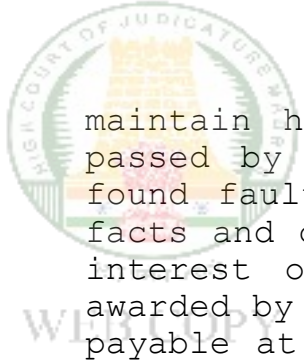
3. Heard Mr.R.Murugappan, learned counsel for Dinakaran and Mr.S.Anand Chandrasekar, learned counsel for Uma Maheshwari and Vidhyalakshmi and perused the materials filed in the form of typed set.

4. Mr.R.Murugappan, learned counsel for Dinakaran, submitted that Dinakaran was ill-treated by his father-in-law, who wanted him to work as a labour in his hotel situated at Kodaikanal. Further, the learned counsel for Dinakaran submitted that Dinakaran was not paid salary by his father-in-law and on account of which, he suffered depression and he has no means to maintain Uma Maheshwari. Further, Uma Maheshwari is a well-educated lady. But, whereas, Dinakaran has not even completed his schooling. Further, the learned counsel for Dinakaran submitted that Dinakaran initiated divorce proceedings in H.M.O.P.No.97 of 2014, before the learned Principal Sub Judge, Dindigul, against Uma Maheshwari, wherein evidence was adduced to show that Uma Maheshwari and her father had treated Dinakaran badly. The learned counsel for Dinakaran also submitted that the Principal Sub Court, Dindigul, has granted decree of divorce on 18.04.2017, on the ground of cruelty in favour of Dinakaran.

5. Per contra, Mr.S.Anand Chandrasekar, learned counsel for Uma Maheshwari and Vidhyalakshmi submitted that an appeal has been filed against the order of the Principal Sub Court, Dindigul and the same is pending. The learned counsel for Uma Maheshwari and Vidhyalakshmi further submitted that Dinakaran had not disputed the marital relationship with Uma Maheshwari and the paternity of the child and therefore, it is his bounden duty to maintain the child. The learned counsel also contended that the Trial Court had awarded only a paltry maintenance of Rs.5,000/- per person, without taking into consideration the present cost of living index.

6. This Court gave its anxious consideration to the rival submissions.

7. Admittedly, the marital relationship is not in dispute. Similarly, Dinakaran has not disputed the paternity of Uma Maheshwari. However, in the divorce proceedings, a finding has been given in favour of Dinakaran that he was subjected to cruelty. The order in the divorce proceedings was passed on 18.04.2017. But, whereas, the order in the present case was passed on 07.06.2016 itself. The scope of enquiry in a proceedings under Section 125 Cr.P.C., is indeed very narrow. In the proceedings before the learned District Munsif-cum-Judicial Magistrate, Kodaikanal, Dinakaran had failed to establish that he had not neglected to



maintain his wife and the child. Therefore, the impugned order passed by the Trial Court awarding monthly maintenance cannot be found fault with. However, taking into consideration the general facts and circumstances of the case, this Court is of the view that interest of justice would be served, if the monthly maintenance awarded by the Trial Court is reduced from Rs.10,000/- to Rs.7,000/- payable at the rate of Rs.5,000/- for the child and Rs.2,000/- for the wife per month from the date of filing of M.C.No.4 of 2014, before the Trial Court.

8. With the above modification in the quantum of maintenance amount, the criminal revision petition is partly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

To:

The District Munsif -cum- Judicial Magistrate,
Kodaikannel, Dindigul District.

Crl.R.C.(MD) No.34 of 2018

and

Crl.M.P.(MD) No.370 of 2018

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AM/JC/SAR 3/07.02.2018/3P/2C