



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.10.2018

DELIVERED ON : 09.10.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.R.C(MD)Nos.537 of 2015 and 586 of 2017

WEB COPY

CrI.R.C(MD)No.537 of 2015:

1.Shabeen

2.Minor Hajira

Second respondent is rep. by her
mother and guardian Shabeen

: Petitioners/
Petitioners

Vs.

Mohamed Hanif Shazuli

: Respondent/
Respondent

PRAYER: Criminal Revision Case is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, praying to call for the records in M.C.No.53 of 2011 on the file of the learned Family Court Judge, Madurai and modify the order by enhancing the maintenance award as prayed in the maintenance case in M.C.No.53 of 2011 and as to the payment from the date of the petition, i.e., 06.07.2011 instead of January, 2014.

For Petitioners

: Mr.S.M.A.Jinnah

For Respondent

: Mr.R.Anand

CrI.R.C(MD)No.586 of 2016:

Mohamed Hanif Shazuli

: Petitioner/
Respondent

Vs.

1.Shabeen

2.Minor Hajira

Second respondent is represented by
her mother and guardian Shabeen

: Respondents/
Petitioners

PRAYER: Criminal Revision Case is filed under Section 397 read with Section 401 and 482 of the Code of Criminal Procedure, praying to call for the entire records pertaining to the order passed by the learned Family Court Judge, Madurai in M.C.No.53 of 2011 vide order dated 11.08.2015 and set aside the same.



For Petitioner
For Respondents

: Mr.R.Anand
: Mr.S.M.A.Jinnah

COMMON ORDER

As the parties in these two revision cases are one and the same and they are challenging order passed by the Family Court, Madurai in M.C.No.53 of 2011 dated 11.08.2015 for different reasons, with consent of the counsels heard together, common order is passed as below.

2.The parties are described as per their description and ranking in M.C.No.53 of 2011 for sake of convenience.

3.The first petitioner Mrs.Shabeen got married to the respondent Mr.Mohamed Hanif Shazuli on 01.07.2001. The second petitioner was born to them on 13.09.2003. Alleging continuous harassment demanding dowry and physical assault including neglect to feed her and force to abort the child conceived, failure to take adequate care to the new born child leading to his death of the son Mohamed Kalil, petition for maintenance is filed.

4.The respondent had contested the petition on the ground that the first petitioner from day one of the marriage insisting for severing the joint family and setting up of independent family. She used to quarrel frequently and leave the matrimonial home without any intimation. For months together she will be in her parents house. At the behest of mediators, she will join him only to desert soon after. Hoping that she will change her attitude, he was tolerating. Her parents and brothers forced to divide the family and partition of the property, which the respondent refused. Even after the birth of the second petitioner, the first petitioner did not realize the importance of joint family. She continued to ill-treat him and pick-up unwanted quarrel. In the said circumstances, he left to Sharjah at UAE in the year 2008 for livelihood. Hearing, the first petitioner had not ceased to quarrel with his family members, he returned to India. While so, on 16.11.2010, the brothers of the first petitioner came to his house with deathly weapon, stabbed his father and brother with intention to kill them for refusing to divide the family property. Three of the petitioner's brothers were charge sheeted for offences under Sections 452, 307, 326 and 506(ii) IPC. To pressurize the respondent to withdraw the criminal case, the petition seeking maintenance is filed, though the first petitioner have enough source of income to maintain her. As far as the second petitioner is concerned, he is ready to take care of her and expressing his desire to have the custody of the child, he has filed G.W.O.P.No.15 of 2011 on the file of the First Additional Sessions Judge, Madurai.

5.On considering the rival submissions and the documents relied on by the respective parties as well as pleadings in G.W.O.P., where



the respondent has admitted his financial capacity to rear his daughter, the second petitioner and the failure on the part of the respondent to prove that the first petitioner is running a shop by name Al Mazith General Stores and earning more than Rs.20,000/-, the Trial Court has fixed maintenance of Rs.5,000/- for the first petitioner/wife and Rs.3,000/- to the second petitioner/daughter payable from January, 2015. The respondent also directed to pay the entire educational fees of the 2nd petitioner.

6.The petitioners have preferred CrI.R.C(MD)No.537 of 2015 to enhance the maintenance as prayed in the petition (Rs.20,000/- for the first petitioner and Rs.10,000/- for the second petitioner) and also to fix the date of payment from the date of filing the petition (06.07.2011) instead of from January 2015.

7.The respondent in his revision petition in CrI.R.C(MD)No.586 of 2016 prays for setting aside the maintenance order dated 11.08.2015, on the ground that the Trial Court failed to consider the documents disclosing the earning capacity of the first petitioner and the medical expenses incurred by him to treat his father and brother due to the brutal attack of the first petitioner's brothers.

8.The learned counsel representing the respondent would rely upon the documents which indicate that the first petitioner though been divorced by pronouncing talaq, had filed petitions under Dowry Prohibition Act and Domestic Violence Act against the respondent and his family members, besides brutal attack on his father and brother.

9.Whereas the learned counsel appearing for the petitioners would contend that the amount of maintenance fixed by the Trial Court is less comparing to the admitted earning capacity of the respondent, besides the Trial Court has erred in fixing the date of commencement to pay maintenance from January 2015 instead of date of filing of M.C.No.53/2001. In the absence of reason why the maintenance denied from the date of filing the petition, the maintenance amount not only be enhanced, but also be ordered to be paid from 06.07.2011.

10.The parties admit the marriage, child birth and subsequent dissolution of marriage by pronouncing talaq. The Trial Court has considered the rival submissions regarding earning capacity and financial status of the parties while fixing the quantum of maintenance, which appears to be fair and adequate. In the absence of documentary proof for exact income, the admission of the parties and other circumstantial facts have been taken into consideration by the Trial Court to fix the quantum of maintenance at Rs 5,000/- and Rs 3000/- to the petitioners 1 and 2 respectively.

11.In the impugned order, consciously the Trial Court has specifically mentioned that the payment of maintenance shall commence from January 2015. Though no reason has been explicitly given in the impugned Judgment, the discussion of facts leading to



the conclusion, if taken into consideration on a whole and not in piece meal, it could be understood why the Trial Court has not fixed the date of filing of the maintenance petition as the date of commencement of payment.

12.To be more specific, the respondent has raised a plea that the petitioner is capable of maintaining herself and after pronouncement of talaq, he has no responsibility to maintain his divorced wife who is capable of maintaining herself. Further he has established that the petition seeking maintenance is filed after the brutal attack on his father and brother by the brothers of the first petitioner. Thus the trigger for filing the maintenance is not the incapacity of the petitioner to maintain herself but the refusal of the respondent's family to divide the joint family property and give share to her. In the light of the above fact, the Trial Court has not fixed the date of filing as date of commencement to pay maintenance, which in the eye of law and facts, is not illegal or improper.

13.In the result, the order of the Trial Court in M.C.No.53 of 2011, dated 11.08.2015 does not require any interference. Hence, both the Criminal Revision Cases are dismissed as devoid of merits.

Sd/-

Assistant Registrar(RECORDS)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1.The Judge,
Family Court,
Madurai.

2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. 2 COPIES

- 1 CC TO Mr.S.M.A.JINNAH , ADVOCATE IN SR No.90063.
- + 1 CC TO Mr.R.ANAND , ADVOCATE IN SR No.90274.
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- SMN
- DS RSK SAR2 19 11 2018 4P 7C

COMMON ORDER MADE IN

Cr1.R.C (MD) Nos.537 of 2015 and 586 of 2017

09.10.2018