



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.02.2018**

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CORAM:

THE HONOURABLE MR.JUSTICE **P.N.PRAKASH**

Crl.R.C. (MD) Nos.206 and 599 of 2017

Crl.R.C. (MD) No.206 of 2017:

N.Sikkandar Mydeen :Revision Petitioner/Respondent
Vs.

1.Mohamed Kadabi
2.Minor S.Shiek Mydeen,
Minor represented by his
mother the first respondent herein.
: Respondents/Petitioners

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for the records in M.C.No.10 of 2013 on the file of the learned Family Judge, Madurai and to set aside the order passed in M.C.No.10 of 2013 dated 17.06.2015.

For Petitioner : Mr.A.Raja
For Respondents : Mr.S.M.A.Jinnah

Crl.R.C. (MD) No.599 of 2017:

1.Mohamed Kadabi
2.Minor S.Shiek Mydeen,
Minor represented by his
mother and natural guardian
the first petitioner Mrs.Mohamed Kadabi
:Revision Petitioners/Petitioners

vs.

N.Sikkandar Mydeen : Respondent/Respondent

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for the records in M.C.No.10 of 2013 dated 17.06.2015 on the file of the learned Family Judge, Madurai and modify the order by enhancing the



maintenance award as prayed in the maintenance case in M.C.No.10 of 2013.

For Petitioners : Mr.S.M.A.Jinnah
For Respondent : Mr.A.Raja

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COMMON ORDER

For the sake of convenience, the parties will be referred to by their name.

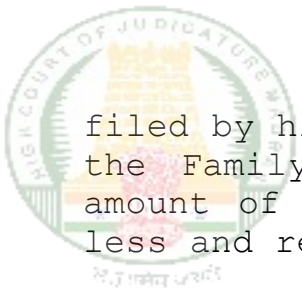
2. Sikkandar Mydeen (hereinafter would be referred to as 'Sikkandar') got married to Mohamed Kadabi (hereinafter would be referred to as 'Kadabi') on 03.10.2010 and they have one child Shiek Mydeen through their marriage. Their marriage ran into rough weather resulting in the parties getting estranged. Sikkandar filed O.S.No.26 of 2012 for divorce before the Family Court, Madurai. During the pendency of the suit, Kadabi filed M.C.No.10 of 2013 under Section 125 of the Code of Criminal Procedure claiming maintenance for herself and her son Shiek Mydeen from Sikkandar. The Family Court passed final orders in M.C.No.10 of 2013 on 17.06.2015, awarding maintenance of Rs.4,000/- per month (Rs.2,000/- each) to Kadabi and Shiek Mydeen payable by Sikkandar from January, 2014 onwards. Challenging the order dated 17.06.2015, Sikkandar has filed CrI.R.C.(MD)No.206 of 2017. Aggrieved by the quantum of maintenance awarded by the Family Court, Kadabi has challenged the same order and has filed CrI.R.C.(MD)No.599 of 2017.

3. The learned counsel for Sikkandar submitted that Sikkandar did not adduce any evidence on his side because he was under the misconception that a joint trial is being held in M.C.No.10 of 2013 and O.S.No.26 of 2012. Therefore, the learned counsel submitted that he was adducing evidence in O.S.No.26 of 2012 and thought that the evidence adduced by him will be taken as evidence in M.C.No.10 of 2013.

4. I am unable to accept the submission for the simple reason that the proceedings in O.S.No.26 of 2012 is under the Family Law and the proceedings in M.C.No.10 of 2013 is under Section 125 of the Code of Criminal Procedure which is Criminal Law. The forums of appeal for the two proceedings are different. It is seen that on the complaint lodged by Kadabi, a criminal case has been registered in Crime No.3 of 2013 under Sections 498-A, 406, 506 (ii) IPC and Sections 4 and 5 of Dowry Prohibition Act @ Sections 4 and 5 of TNPWH Act against Sikkandar and his family members.

<https://hcservices.ecourts.gov.in/hcservices/>

5. The learned counsel for Sikkandar submitted that the suit



filed by him in O.S.No.26 of 2012 is still pending on the file of the Family Court. However, it is the case of Kadabi that the amount of maintenance awarded by the Family Court is indeed very less and requires to be enhanced.

6. On a conspectus of the facts obtaining in this case, this Court is of the view that the interest of justice will be served, if an opportunity is given to Sikkandar to adduce evidence in M.C.No.10 of 2013. It is seen that from January, 2014 to February, 2018, the arrears of maintenance at the rate of Rs.4,000/- per month comes to Rs.2,00,000/- [50 months x Rs.4,000/-]. Sikkandar has paid Rs.90,000/- to Kadabi during the condonation of delay petition in Crl.M.P.(MD)No.8889 of 2016. Sikkandar is directed to deposit Rs.1,10,000/- [Rupees One Lakh and Ten Thousand only], within three months from the date of receipt of a copy of this order and that the amount can be deposited in installments in M.C.No.10 of 2013 before the Family Court, Madurai. On such deposit, Kadabi will be entitled to withdraw the amount. The deposit shall be made on or before 30 May, 2018. In the event of Sikkandar depositing Rs.1,10,000/- [Rupees One Lakh and Ten Thousand only] before 30 May, 2018, the order dated 17.06.2015 in M.C.No.10 of 2013 passed by the Family Court, Madurai will stand quashed. Liberty is given to Sikkandar to adduce evidence in M.C.No.10 of 2013 thereafter. During the pendency of M.C.No.10 of 2013, Sikkandar shall pay the monthly ad-interim maintenance of Rs.2,000/- per month to Kadabi. The Family Court shall consider the evidence afresh and pass orders on merits. In the event of Sikkandar not depositing Rs.1,10,000/- [Rupees One Lakh and Ten Thousand only] before 30 May, 2018, the order passed by the Family Court will stand confirmed and Kadabi will be entitled to file a petition under Section 127 of the Code of Criminal Procedure for enhancement of maintenance.

7. With the above directions, Crl.R.C.(MD)No.206 of 2017 is ordered.

8. In view of the directions issued in Crl.R.C.(MD)No.206 of 2017, Crl.R.C.(MD)No.599 of 2017 is dismissed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar



To

The Judge,
Family Court,
Madurai.

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+ 1 cc TO Mr.A.Raja , Advocate in SR No. 49900

SML

AE/JC/SAR2/12.03.2018/4P/3C

Common Order made in
Cr1.R.C. (MD) Nos.206 and 599 of 2017
Dated:-**19.02.2018**