



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 29.08.2017

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C(MD) .No.381 of 2017

S.Mani ... Petitioner/Petitioner

-Vs-

A.Sankaranarayanan @ Rajendran ... Respondent/Respondent

Prayer : Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order passed in Cr.M.P.No.52 of 2011 in M.C.No.38 of 2004 on the file of the learned Judge, Family Court, Madurai and enhance the maintenance amount from Rs.3,000 to Rs.20,000/- as prayed in the above Cr.M.P.No.52 of 2011.

For Petitioner

: Mr.G.Thalaimutharasu for
Mr.S.T.Sasidharan Tamilkani

For Respondent

: Mr.S.C.Herold Singh
for Mr.Muthuvelan

O R D E R

This criminal revision case has been filed, challenging the order passed by the court below under Section 127 Cr.P.C, directing the respondent to pay a lump sum amount of Rs.5,00,000/- (Rupees five lakhs only) as permanent alimony to the petitioner.

2.The case of the petitioner in brief is as follows:

The petitioner is the wife of the respondent. Alleging that the respondent has neglected and failed to maintain her, earlier, she has filed a petition under Section 125 Cr.P.C on the file of the Family Court, Madurai, seeking maintenance at the rate of Rs.7,000/- per month in M.C.No.38 of 2004 and the Family Court, Madurai allowed the petition, by an order dated 22.01.2011, thereby directing the respondent to pay a sum of Rs.3,000/- per month to the petitioner. Thereafter, the petitioner filed an application under Section 127 Cr.P.C, seeking enhancement of maintenance amount. In the mean time, the respondent/husband filed a petition in H.M.O.P.No.80 of 2014, on the file of the same Court, seeking divorce on the ground that the petitioner and respondent are living separately for 33 years and the marriage was already irretrievably broken down and the Family Court allowed the petition filed by the respondent/husband, by granting a decree of divorce. The Family Court also allowed the petition filed by the respondent/wife, by enhancing the maintenance at the rate of Rs.5,000/- for 4 years from 2014 to 2017 i.e from the date of filing the petition under Section 127 Cr.P.C till the date of



retirement of the respondent/husband and after superannuation, the maintenance amount is reduced to Rs.2,000/- for another 15 years and thereafter, by calculating the sum, the Family Court ordered a lump sum amount of Rs.5,00,000/- (Rupees five lakhs only) as permanent maintenance to the petitioner. Challenging the same, the present petition is filed.

3.I have heard Mr.G.Thalai Mutharasu, learned counsel appearing for the petitioner, Mr.S.C.Herold Singh, learned counsel appearing for the respondent and perused the records carefully.

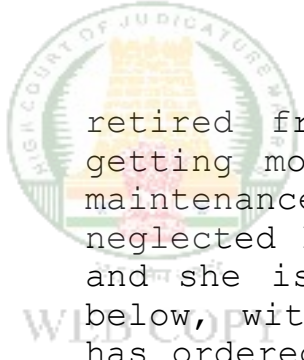
4.The learned counsel appearing for the petitioner submitted that the petitioner has been fighting for maintenance from the year 2004. Earlier, the petitioner challenged the order granting maintenance at the rate of Rs.3,000/- by filing a revision in CrI.R.C.(MD).No.840 of 2011 before this Court and this Court, by an order dated, 05.09.2014, dismissed the above revision as infructuous, without expressing any opinion on the order passed by the Family Court. According to the petitioner, the respondent was working as the General Manager in the Indian Bank and getting salary around Rs.1,00,000/- (Rupees One Lakh only). Recently, he has retired from service in the month of April 2017, and he is also getting pension more than Rs.30,000/-. The petitioner is left with no income and she has no means to maintain herself. In the said circumstances, the court below, without considering the materials in proper perspective, ordered a lump sum amount of Rs.5,00,000/-, which is not permissible in Law.

5.Per contra, the learned counsel appearing for the respondent submitted that the respondent is complying with the earlier order and paying monthly maintenance regularly. Now, he has retired from service and he is only getting a meagre pension amount. Apart from that, he has a big family to maintain. He is also willing to pay Rs.5,00,000/- (Rupees five lakhs only) as permanent maintenance to the petitioner. Hence, the order passed by the court below does not require interference.

6.I have considered the rival submissions and carefully gone through the materials available on record.

7.As rightly pointed by the learned counsel for the petitioner, the petitioner/wife is fighting for maintenance from the year 2004. Earlier, the Family Court granted maintenance at the rate of Rs.3,000/-. She has challenged the said order by way of filing a revision before this Court. Pending revision, she has filed an application under Section 127 Cr.P.C. Before the revision has been disposed of by this Court, the Family Court, Madurai passed an order in the application filed under Section 127 Cr.P.C. Considering the said order, this Court dismissed the revision as infructuous, without expressing any opinion on the order passed by the court below. It is an admitted fact that the petitioner is the wife of the respondent. Subsequently, the

respondent also filed an application for divorce and got a decree for divorce. Hence, the respondent has a legal obligation to maintain the petitioner. It is also an admitted fact that the respondent was working as the General Manager in the Indian Bank and getting salary around Rs.1,00,000/- and recently, he has



retired from service in the month of April 2017, now, he is getting more than Rs.30,000/- as pension. He has means to pay maintenance to the petitioner. Whereas, the petitioner is being neglected by the respondent and she has no means to maintain her and she is in her old age, without any support. But the court below, without considering the said facts in proper perspective, has ordered a lump sum amount of Rs.5,00,000/-, by calculating the maintenance at the rate of Rs.5,000/- from the date of the petition till the date of retirement, and after retirement, at the rate of Rs.2,000/-. While awarding the lump sum amount, the court below, did not consider the means of the respondent correctly.

8. Apart from that, the petitioner is also not willing to accept the lump sum amount and she only sought monthly maintenance. It is also the submission of the petitioner that he is getting considerable amount of pension. Hence, in the interest of justice and also considering the other circumstances, this Court is of the view that the order passed by the court below is liable to be set aside and the monthly maintenance amount is enhanced at the rate of Rs.7,000/- (Rupees Seven thousand only) per month and the respondent is directed to pay the enhanced amount from the date of filing of the petition under Section 127 Cr.P.C i.e April 2014.

9. In the result, this Criminal Revision Case is allowed and the order passed in Cr.M.P.No.52 of 2011 in M.C.No.38 of 2004 on the file of the Family Court, Madurai is set aside and the respondent is directed to pay the enhanced maintenance amount of Rs.7,000/- per month from the date of filing of the petition under Section 127 Cr.P.C. The award of maintenance should be paid within a period of eight weeks from the date of receipt of a copy of this order.

10. It is also now reported by the learned counsel for the respondent that the respondent has already deposited a sum of Rs.5,00,000/- (Rupees five lakhs only) and the court below is directed to return the amount, after deducting the arrears as on today. The petitioner is also permitted to withdraw the remaining amount. The respondent is directed to pay monthly maintenance on or before 5th of every English Calendar Month without fail.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

The Judge, Family Court, Madurai.

+One cc to M/s.S.T.Sasidharan, Advocate, SR.No.75308

+One cc to M/s.V.Muthuvelan, Advocate, SR.No.75290

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

RL/4C/3P/MR/KKR/SAR4/6/10/2017

Crl.R.C(MD) No.381 of 2017

29/08/2017