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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI.R.C. (MD) No.809 of 2017

and

CRL.MP. (MD) .No.9999 of 2017

Vignesh @ Ponparivallal

:Revision Petitioner/Respondent

Vs.

1.Pandi Srilatha

2.Minor Pon Akash

3.Minor Pon Vikash

: Respondents

[Both second and third respondents represented by mother - first respondent]

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for records pertaining to the order passed in Cr.MP.No.332 of 2017 in M.C.No.52 of 2013, dated 28.09.2017, on the file of the learned Additional Chief Judicial Magistrate, Madurai and set aside the same.

For Petitioner

: Mr.Pandi Durai

For Mr.I.Pinaygash

For Respondents

: Mr.Sankar

For Mr.A.Jaya Ramachandran

ORDER

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

2. Vignesh @ Ponparivallal got married to Pandi Srilatha, on 18.02.2008 and they have two children, by name, Minor Pon Akash and Minor Pon Vikash, through the wedlock. Vignesh @ Ponparivallal was working in Dubai. On account of the matrimonial discord, the couple got estranged. Pandi Srilatha filed M.C.No.52 of 2013 under Section 125 of the Code of Criminal Procedure, claiming maintenance for herself and her two children. The learned Additional Chief Judicial Magistrate, Madurai, by order dated 07.03.2014, awarded maintenance of Rs.2,500/- per month each to Pandi Srilatha and her two children, [totally Rs.7,500/- per month]. Thereafter, Pandi Srilatha and her two children filed Cr.MP.No.332 of 2017, under Section 127 of the Code of Criminal Procedure for enhancement of the maintenance. Notice was ordered to Vignesh @ Ponparivallal and after hearing both the parties, the learned Additional Chief Judicial Magistrate, Madurai, by order dated 08.06.2017, enhanced the maintenance amount



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Name	Original amount Per month	Enhanced amount Per month
Pandi Srilatha	Rs.2,500/-	Rs.5,000/-
Minor Pon Akash	Rs.2,500/-	Rs.15,000/-
Minor Pon Vikash	Rs.2,500/-	Rs.15,000/-

3. Thus, Vignesh @ Ponparivallal has been directed to pay a total maintenance amount of Rs.35,000/- per month to Pandi Srilatha and her two children, aggrieved by which, Vignesh @ Ponparivallal is before this Court.

4. Heard Mr.Pandi Durai, learned counsel appearing for Vignesh @ Ponparivallal and Mr.Sankar, learned counsel appearing for Pandi Srilatha.

5. Mr.Pandi Durai, learned counsel, contended that Pandi Srilatha has filed a criminal case in Crime No.68 of 2015, on 05.06.2015 under Section 498(A) of the Indian Penal Code and the investigation is pending. Mr.Pandi Durai also submitted that Vignesh @ Ponparivallal filed a quash application before this Court and this Court has granted interim direction not to lay charge sheet in Crime No.68 of 2015.

6. Per contra, Mr.Sankar, learned counsel appearing for Pandi Srilatha submitted that Vignesh @ Ponparivallal has got sufficient means to maintain his wife and her children and that he has been adopting dilatory tactics by jumping jobs only to avoid the payment of maintenance to his family.

7. This Court gave its anxious consideration to the above submissions made by the learned counsel on either side.

8. The status of the parties is not in dispute. It may be necessary to extract the following paragraph from the order of the Trial Court, which is as under:-

"The respondent who denied the said monthly salary admitted in his cross-examination that his monthly salary is 6,500/- thirams which is equivalent to 1,17,000/- in Indian money. The documents which are all produced on the side of the respondent also proved the Same: Hence the admitted salary of the respondent itself is Rs.1,17,000/- per month. In his counter, the respondent mentioned so many expenses and stated that by excluding all those expenses' he is having only 11,000/- at his hands. The respondent in his cross examination admitted that he bought a cell phone by name I-phone, in the last year and its cost is Rs.70,000/- and for which he stated that he purchased the said mobile phone for loan. The respondent who is a father of two sons studying in



school having no money to spent for their education bought a cell phone worth about Rs.70,000/- itself shows that the respondent is having sufficient source of income to meet out all expenses. He also stated in his counter that he spent nearly Rs.2 lakhs to obtain an international car licence, which is necessary for his job. Even a car with (international driving licence is required for his job offers, all those things clearly shows his financial capacity and earning capacity in foreign country. Now it is stated on the side of the respondent that-since he was not return to Dubai after his leave period, he was terminated from his service by the company in which he was working. To prove the same his termination letter given by the company is marked on his side as exhibit. To grant maintenance to the deserted wife and children against the respondent, the court has to just see the earning capacity of the husband and not the specific earning of the respondent concerned at the month in which Maintenance claimed. As admitted by the respondent himself he is having capacity to earn Rs.1,17,000/- monthly. Even he is terminated from service at present he will get job in some other company as alleged by him, since, he himself admitted in his evidence that he frequently changed his company. Hence taking into consideration of the earning capacity of the respondent his age, hale and healthy body he is having and the requirements of the minor 2nd and 3rd petitioners for their education and the other maintenance of all the petitioners with the same status as if they are living with this respondent as his wife and children, this Court found it is lawful to award enhanced monthly maintenance of Rs.5,000/- to the first petitioner and 15,000/- to each the 2nd and 3rd minor petitioners".

9. From a reading of the above, it is seen that the Trial Court has considered all aspects, including the contention of Vignesh @ Ponparivallal that he is out of job now. Vignesh @ Ponparivallal himself has admitted that he has been changing job frequently and therefore, he cannot be heard to say that he has no means to make the payment. However, taking into consideration the facts and circumstances of the case, this Court is of the view that it will be in the interest of justice, if the maintenance amount awarded by the Trial Court is altered. Accordingly, the maintenance amount awarded by the Trial Court is altered as follows:-

- The maintenance amount of Rs.5,000/- awarded by the Trial Court to Pandi Srilatha stands confirmed.
- The maintenance amount of Rs.15,000/- per month payable to each child is reduced to Rs.10,000/- per month to each child.
- Accordingly, Vignesh @ Ponparivallal will have to pay a total maintenance amount of Rs.25,000/- per month to his wife and two children.



- The rest of the conditions shall stand unaltered.

10. The Criminal Revision Case is disposed on the above terms. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

The Additional Chief Judicial Magistrate,
Madurai.

+One cc to Mr.T.Lajapathi Roy, Advocate, SR.No.40178

+One cc to Mr.A.Jayaramachandran, Advocate, SR.No.40175

NB

RL/4C/4P/KKR/SAR3/22/1/2018

ORDER MADE IN
Cr1.R.C. (MD) No.809 of 2017

Dated:-
03.01.2018