



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.(MD) No.892 of 2017

and

Crl.M.P.(MD) Nos.10910 of 2017 and 1615 of 2018

1.N.Kalarani

2.Manimozhi

3.Minor Gayathri

... Petitioners/Respondents

(1st Respondent as a guardian of 2nd & 3rd

petitioners filed an appeal on behalf them)

vs.

Nelakandan

... Respondent/Petitioner

PRAYER: Criminal revision filed, under Sections 397 and 401 Cr.P.C., to call for the records pertaining to the impugned Order passed by the Additional District and Sessions Judge, Palani Dindigul District in Crl.R.C.No.11 of 2016 dated 28.08.2017 in so far as modifying the order passed in M.C.No.81 of 2013 dated 15.09.2016 on the file of Chief Judicial Magistrate, Dindigul and set aside the same.

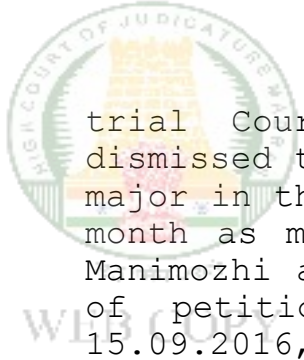
For Petitioners : Mr.K.P.S.Palanivel Rajan

For Respondent : Mr.L.Prabhu

O R D E R

For the sake of convenience the parties herein are referred to by their name.

2.Kalarani got married to Neelakandan on 27.06.1996 and they have three children, namely, Viswanathan, Manimozhi and Kayathri through the wedlock. Neelakandan is working as driver in the Primary Health Centre, Authoor, Dindigul District. Their marriage ran into rough weather, on account of which the couple got estranged. Kalarani filed M.C.No.81 of 2013 before the Chief Judicial Magistrate, Dindigul under Section 125 Cr.P.C. against Neelakandan, claiming maintenance for herself and her three children. On notice, Neelakandan entered appearance and filed his counter. On behalf of Kalarani, she examined herself as P.W.1 and examined one Subramani as P.W.2. Exs.P.1 to P.9 were marked on her behalf. Neelakandan did not adduce any oral evidence nor was any document marked by him. The



trial Court by order dated 15.09.2016, in M.C.No.81 of 2013 dismissed the claim of maintenance qua Viswanathan since he became a major in the meantime and directed Neelakandan to pay Rs.3,000/- per month as maintenance to Kalarani and Rs.2,000/- per month each to Manimozhi and Kayathri (totally Rs.7,000/- per month) from the date of petition, namely, 06.12.2013. Challenging the order dated 15.09.2016, Neelakandan filed Crl.R.C.No.11 of 2016 before the Additional District and Session Court, Palani, in which, the learned Additional District Judge by order dated 28.08.2017, has reduced the monthly maintenance from Rs.7,000/- to Rs.4,000/-. Aggrieved by which, Kalarani and her two children have filed the present Criminal Revision Case.

3. Heard Mr.K.P.S.Palanivel Rajan, learned counsel for Kalarani and Mr.L.Prabhu, learned counsel for Neelakandan.

4. Learned counsel for Neelakandan submitted that Neelakandan is working as a driver in the Primary Health Centre and that he does not have means to pay Rs.7,000/- per month that was awarded by the trial Court. He also submitted that his eldest son Viswanathan is admittedly a major and he is gainfully employed as a driver of JCB and he can take care of his mother and sisters.

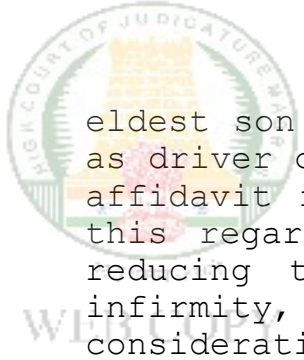
5. Per contra, Mr.K.P.S.Palanivel Rajan, learned counsel appearing for Kalarani refuted his contentions stating that the reasonings given by the first appellate Court for reducing the maintenance from Rs.7,000/- to Rs.4,000/- are unsustainable.

6. This Court has given its anxious consideration to the rival submissions.

7. It is seen that both the Courts below have given a finding that the marriage subsists and that Neelakandan neglected to maintain his wife and children. Therefore, this issue is no more res integra.

8. What remains to be seen is the quantum of maintenance. The trial Court has held that Neelakandan is residing in his own house and his parents are not there for him to take care of them. Monthly salary of Neelakandan has been determined as Rs.24,080/- and after deductions he is receiving Rs.13,085/- per month. The trial Court has given a finding that Neelakandan is living in his own house and he does not have parents to take care of them. Taking all these factors into consideration, the trial Court has awarded Rs.7,000/- per month as maintenance. However, the Sessions Court has held that Rs.7,000/- per month is more than 50% of Rs.13,085/-, therefore it has to be reduced from Rs.7,000/- to Rs.4,000/-.

9. In the considered opinion of this Court it is the duty of Neelakandan to provide his children a decent education for which he has to earn and cannot plead helplessness. That apart, the Sessions Court has taken into consideration the arguments of Neelakandan in the counter statement filed by him before the trial Court that his



eldest son Viswanathan is getting a salary of Rs.8,000/- per month as driver of JCB. Except the assertion by Neelakandan in the counter affidavit filed by him, there is no legally admissible evidence in this regard. Therefore, the order passed by the revisional Court reducing the amount from Rs.7,000/- to Rs.4,000/- suffers from infirmity, warranting interference. However, taking into consideration, the facts and circumstances of the case, interest of justice would be served if the maintenance amount is determined at Rs.6,000/- per month as follows:

(a) Rs.3,000/- per month for Kalarani.

(b) Rs.1,500/- per month each for Manimozhi and Kayathri.

The maintenance amount shall be paid from the date of filing of M.C.No.81 of 2013 before the Chief Judicial Magistrate, Dindigul i.e., from 06.12.2013. The maintenance shall be either deposited in the trial Court or directly paid to Kalarani before the 10th of every English Calender month. Neelakandan shall pay the arrears of maintenance within 6 months from the date of receipt of a copy of this order, failing which, Kalarani will be entitled to initiate proceedings under Section 128 Cr.P.C.

10.This Criminal Revision Case is ordered accordingly. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To:

1. The Chief Judicial Magistrate, Dindigul.
2. The Additional District and Sessions Judge,
Palani.

Copy To:-

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.L.PRABHU, ADVOCATE IN SR No. 56315

SJ

TE/JC/SAR-4 : 03/04/2018 : 3P/6C