



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2018

CORAM

THE HON'BLE MR.JUSTICE DR.G.JAYACHANDRANCrI.R.C.(MD) No.365 of 2018andCrI.M.P.(MD)No.5106 of 2018

A.Manthakklai

...Petitioners

Vs.

1.M.Muthurakku

2.Branch Manager

TNSTC,
Ulaganeri,
Uthangudi Post,
Madurai.

...Respondents

PRAYER:Criminal Revision Case - filed under Section 397 r/w 401 of Criminal Procedure Code, to revise the order dated 07.04.2017 in CrI.M.P.No.145 of 2017 in MC.11 of 2000 passed by the learned Chief Judicial Magistrate cum Assistant Sessions Judge, Sivagangai.

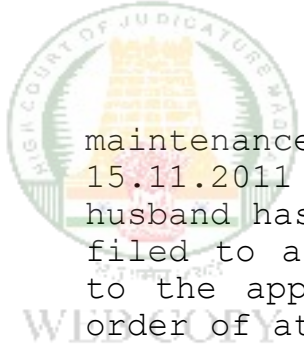
For Petitioner : Mr.AK.Azagarsami
For Respondents : Mr.T.Kumar (For R1)
Mr.B.Sivaraman (for R2)

ORDER

Heard the learned counsel for the revision petitioner and respondents.

2.The second respondent / garnishee is represented through counsel.

3.It is a case out of recovery of maintenance. The petitioner herein, Manthakklai was married to the first respondent viz., Muthurakku. She was blessed with three children. Later they got separated. The Panchayat was held between the family members and the house property was settled in favour of the first respondent and her children on 13.10.2000. Later divorce petition was filed before the learned Additional Sessions Judge, Madurai, whereby the marriage was dissolved by decree and judgment dated 30.07.2004 in H.M.O.P.No.54 of 2002. The first respondent has also preferred maintenance petition under Section 125 Cr.P.C. in MC.No.11 of 2000 seeking financial assistance from her divorced husband, who is an employe of Tamil Nadu State Transport Corporation. The learned Chief Judicial Magistrate enhanced the



maintenance amount as Rs.10,000/- per month by order dated 15.11.2011 in M.C.No.11 of 2000. Since the revision petitioner / husband has failed to pay the maintenance, an application has been filed to attach the salary of the revision petitioner. Pursuant to the application, the Chief Judicial Magistrate has passed an order of attachment, which is now impugned before this Court.

4.The learned counsel for the revision petitioner would submit that there would be order of attachment of the salary pursuant to non payment of maintenance. The second respondent / garnishee has furnished the statement of account of the revision petitioner, wherein pursuant to the impugned order Rs.10,000/- has been deducted from the salary of the first respondent from February 2, July 2018. Thereafter, they are not in a position to deduct any money, since there is no sufficient amount for deduction as well as the first respondent has failed to turn up to do his duty.

5.The main contention of the revision petitioner is that he is drawing only Rs.8,000/- as back home salary, whereas the first respondent has already been settled with the property worth about Rs.80,00,000/- and she is taken care by her son.

6.Considering the rival submissions and the statement of account submitted by the second respondent / garnishee and on perusal of the records, it is clear that even before getting the decree of divorce in the year 2004, the residential property has been settled in favour of the first respondent. Admittedly, it is in enjoyment of the first respondent and her children. The application filed for maintenance in the year 2011 has been periodically been filed to enhance the maintenance amount. The learned Chief Judicial Magistrate, Sivagangai has enhanced the maintenance amount from Rs.1,000/- to Rs.10,000/-. It is an exparte order. If at all he is aggrieved by the quantum fixed, he can adjudicate the same before the Chief Judicial Magistrate, seeking modification or alternation. He cannot prevented recovery of the maintenance amount fixed by the Court below by challenging the adjudication order. Therefore, this Court finds no merit in this Criminal Revision Petition and hence, this Criminal Revision Petition is dismissed.

7.However, the revision petitioner if he desires may challenge the exparte order dated 15.11.2004 or file an application to modify or alter the maintenance amount in accordance with law.

Sd/-

Assistant Registrar (PROTOCOL)

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To

1.The Chief Judicial Magistrate cum Assistant Sessions Judge,
Sivagangai.

WEB COPY

2.The Branch Manager
TNSTC,
Ulaganeri,
Uthangudi Post,
Madurai.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC To MR.D.SIVARAMAN, Advocate SR. NO.88921

+1 CC To MR.A.K.AZAGARSAMI, Advocate SR. NO. 89244

Crl.R.C.(MD) No.365 of 2018

TA

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