



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.10.2018

CORAM:
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.RC.(MD)Nos.103 of 2016 & 487 of 2012
and
M.P.(MD).Nos.3004 & 1690 of 2016

R.Machakkalai : Petitioner in Crl.R.C.(MD).No.103 of 2016
1.Rathiammal
2.Minor Subhashini
(Represented through her mother/natural guardian
the first petitioner) : Petitioners in Crl.R.C.(MD).No.487 of 2012

Vs.

1.Rathiammal
2.R.M.Subhashini : Respondents in Crl.R.C.(MD).No.103 of 2016

Machakkalai : Respondent in Crl.R.C.(MD).No.487 of 2012

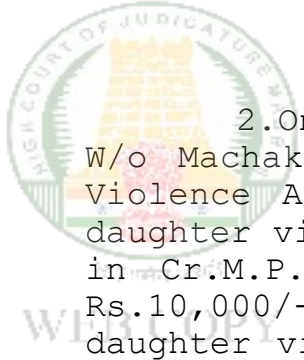
PRAYER in Crl.R.C.(MD).No.103 of 2016 : Criminal Revision Petition filed under Section 397 read with 401 of Criminal Procedure Code to call for the records pertaining to the judgment rendered by the Family Court in M.C.No.57/2010 vide judgment dated 10.12.2015 and set aside the same.

PRAYER in Crl.R.C.(MD).No.487 of 2012 : Criminal Revision Petition filed under Section 397 read with 401 of Criminal Procedure Code to call for the records to set aside the judgment and sentence passed in C.A.No.13 of 2012, on the file of the learned Principal Sessions Judge, Madurai, dated 06.08.2012 modifying the order passed in Cr.M.P.No.671 of 2011 in Cr.M.P.No.670 of 2011 dated 18.05.2011, on the file of the learned Judicial Magistrate No.IV, Madurai, insofar as the reduction of Maintenance from Rs.10,000/- per men sum to Rs.7,000/- for each of the petitioners.

For Petitioner	: Mr.R.Anand
For Respondents	: Mr.R.Karunanidhi (In Crl.R.C.(MD).No.103 of 2016)
For Petitioners	: Mr.S.J.Charavarthy
For Respondent	: Mr.R.Anand (In Crl.R.C.(MD).No.487 of 2012)

COMMON JUDGMENT

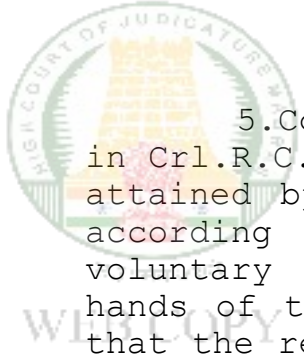
Heard the learned counsel appearing for the revision petitioner in Crl.R.C.(MD).No.103 of 2016, who is also the respondent in Crl.R.C.(MD).No.487 of 2012.



2. On perusal of the records, this Court finds that Rathiammal W/o Machakkalai, has earlier filed a petition under the Domestic Violence Act, 2005, seeking financial assistance for her and her daughter viz., Subhashini. The trial Court in Cr.M.P.No.671 of 2011 in Cr.M.P.No.670 of 2011, dated 18.05.2011, had fixed a sum of Rs.10,000/- as monthly maintenance to his wife Rathiammal and her daughter viz., Subhashini and also to pay a sum of Rs.10,000/- as litigation expenses. Aggrieved by that, Machakkalai has preferred C.A.No.13 of 2012, on the file of the learned Principal Sessions Judge, Madurai, to modify the order of the Trial Court. The First Appellate Court has partly allowed the appeal, modifying the maintenance amount from Rs.10,000/- per month to Rs.7,000/- to each of the petitioners. Aggrieved by the modification, reducing the maintenance amount, Rathiammal and her daughter-Subhashini has preferred Crl.R.C.No.487 of 2012.

3. Pending petition under the Domestic Violence Act, 2005, seeking financial assistance as monthly maintenance, her wife Rathiammal and her daughter / Subhashini had also filed a maintenance case under Section 125 Cr.P.C. before the Family Court, Madurai, seeking maintenance of Rs.15,000/- for her and Rs.5,000/- for her daughter. Pending maintenance petition, the revision petitioner herein has tendered voluntary retirement and got retired on 31.05.2012. Therefore, taking note of the fact that there is a change in circumstance, after the order was passed by the Learned Magistrate in the application filed under the Domestic Violence Act and the order passed in C.A.No.13 of 2012, modifying the maintenance amount fixed by the trial Court and the Family Court, Madurai has fixed a sum of Rs.8,000/- per month as maintenance to the first respondent-Rathiammal and Rs.5,000/- per month to the second respondent-Subhashini until she gets married. Aggrieved by the fixation of maintenance at the rate of Rs.8,000/- to the first respondent and Rs.5,000/- to the second respondent until she gets married. Aggrieved by that, Rathiammal and her daughter Subhashini had preferred Crl.R.C.(MD).No.103 of 2016.

4. After perusing the records and hearing the learned counsel appearing for the respective parties, this Court finds that nothing survives in Crl.R.C.(MD).No.487 of 2012, since the maintenance amount passed by the learned Judicial Magistrate under the Domestic Violence Act at the rate of Rs.10,000/- per month for each of the petitioner was later modified by the Appellate Court as Rs.7,000/- each per month, which is impugned in Crl.R.C.(MD).No.487 of 2012, but, later, in M.C.No.57 of 2010, the Family Court has taken note of the said order as well as the resignation of the revision petitioner, subsequent to the order passed in Crl.A.No.13 of 2012 and has refixed the maintenance at the rate of Rs.8,000/- per month to the first petitioner and Rs.5,000/- per month to the second petitioner. In the light of the above fact, Crl.R.C.(MD).No.487 of 2012 is dismissed as infructuous.



5. Considering the points canvassed by the revision petitioner in Crl.R.C.(MD).No.103 of 2016, this Court finds that the retirement attained by the revision petitioner is a voluntary retirement and according to the revision petitioner, he was forced to submit voluntary retirement due to the harassment, which he met at the hands of the first respondent. From the records, it is now clear that the revision petitioner herein has already attained the age of superannuation and even if he had not given voluntary retirement, by the time, he would have reached the age of superannuation, his income will be only the pensionary benefits and monthly pension. The second respondent viz., Subhashini has attained majority and it is also stated that she is now in employment after completing BCA Course.

6. In the said circumstances, this Court finds that monthly maintenance of Rs.8,000/- fixed by the Family Court for the first respondent and Rs.5,000/- per month to the second respondent are not excessive. The Court below has appreciated the materials placed before it in a proper manner and has fixed the maintenance appropriately. If the revision petitioner herein is able to establish that the second respondent / daughter is gainfully employed, he can file a petition before the Family Court and seek for modification insofar as the revision petitioner is concerned. Crl.R.C.(MD).No.103 of 2016 is disposed of with the above observations. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Family Court, Madurai.

2. The Principal Sessions Judge, Madurai.

3. The Judicial Magistrate No.IV, Madurai.

+1CC to Mr.R.Anand, Advocate, SR.No.90273

+1CC to Mr.R.Karunanidhi, Advocate, SR.No.89564

Crl.RC.(MD) Nos.103 of 2016
& 487 of 2012
09.10.2018

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