



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.03.2018**

CORAM:

THE HONOURABLE MR.JUSTICE **P.N.PRAKASH****Crl.R.C. (MD) No.745 of 2016**

WEB COPY

P.Anandhi

: Petitioner

Vs.

S.Murali Viswanathan

: Respondent

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for the records pertaining to the order dated 05.04.2016 made in M.C.No.2 of 2011 on the file of the Judicial Magistrate Court No.2, Thanjavur and set aside a portion of the above order which directs the respondent/husband to pay the maintenance amount of Rs.15,000/- per month to the petitioner/wife only from the date of order and permits the respondent to deduct the maintenance amount which the respondent/husband has paid in any other case and allow this Criminal Revision Petition directing the respondent/husband to pay a sum of Rs.15,000/- per month towards maintenance amount to the petitioner from the date of application in M.C.No.2 of 2011.

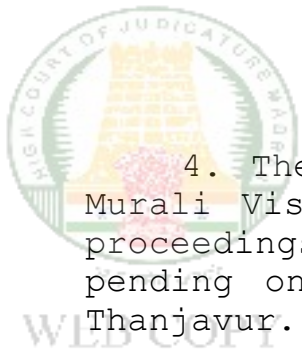
For Petitioner	: Mr.Y.Krishnan
For Respondent	: Mr.S.Raja Prabu

ORDER*********

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

2. Anandhi filed M.C.No.2 of 2011 before the learned Judicial Magistrate No.2, Thanjavur, under Section 125 of the Code of Criminal Procedure against Murali Viswanathan, in which, the learned Judicial Magistrate No.2, Thanjavur, passed final orders on 05.04.2016, directing Murali Viswanathan to pay Rs.15,000/- per month as maintenance to Anandhi with a further rider that Murali Viswanathan can deduct any amount paid by him as maintenance to Anandhi in any collateral proceedings. However, the learned Judicial Magistrate No.2, Thanjavur, has not stated specifically as to whether Anandhi will be entitled to maintenance from the date of petition or from the date of order. Challenging this portion of the order, Anandhi is before this Court.

3. Heard Mr.Y.Krishnan, learned counsel for Anandhi and Mr.S.Raja Prabu, learned counsel for Murali Viswanathan.



4. The learned counsel for Murali Viswanathan submitted that Murali Viswanathan has paid maintenance to Anandhi in collateral proceedings, namely in I.A.No.31 of 2012 in H.M.O.P.No.184 of 2011 pending on the file of the learned Principal Subordinate Judge, Thanjavur.

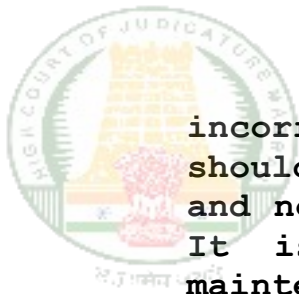
5. The learned counsel for Anandhi submitted that Anandhi has received only 11 months maintenance at the rate of Rs.7,000/- per month. He also submitted that H.M.O.P.No.184 of 2011 that was filed by Murali Viswanathan for divorce has been dismissed for default on 01.04.2013 in order to avoid payment of interim maintenance.

6. This Court perused the order dated 05.04.2016 passed by the learned Judicial Magistrate No.2, Thanjavur, in M.C.No.2 of 2011 and found that the Magistrate has not given any reason for granting maintenance from the date of order. In fact, in the order of the Magistrate, there is no specific direction that the maintenance amount needs to be paid from the date of order. However, taking into consideration the wordings in Section 125(2) of the Code of Criminal Procedure, one has to infer that the Magistrate has awarded maintenance only from the date of order.

7. In **Jaiminiben Hirenghai Vyas @ Anr. V. Hirenghai Rameshchandra Vyas & Anr.** [2015(1) LW (CrI.) 631 (SC)], the Supreme Court has stated as follows:

"7. Section 125 of the Cr.P.C., therefore, impliedly requires the Court to consider making the order for maintenance effective from either of the two dates, having regard to the relevant facts. For good reason, evident from its order, the Court may choose either date. It is neither appropriate nor desirable that a Court simply states that maintenance should be paid from either the date of the order or the date of the application in matters of maintenance. Thus, as per Section 354(6) of the Cr.P.C., the Court should record reasons in support of the order passed by it, in both eventualities. The purpose of the provision is to prevent vagrancy and destitution in society and the Court must apply its mind to the options having regard to the facts of the particular case.

8. In **Shail Kumari Devi v. Krishan Bhagwan Pathak**, this Court dealt with the question as to from which date a Magistrate may order payment of maintenance to wife, children or parents. In **Shail Kumari Devi**, this Court considered a catena of decisions by the various High Courts, before arriving at the conclusion that it was



incorrect to hold that, as a normal rule, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance. It is, therefore, open to the Magistrate to award maintenance from the date of application. The Court held, and we agree, that if the Magistrate intends to pass such an order, he is required to (2008) 9 SCC 632; Para's 39 - 41. record reasons in support of such Order. Thus, such maintenance can be awarded from the date of the Order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary."

8. From a reading of the rulings of the Supreme Court in **Jaiminiben Hirenbbhai Vyas** and **Shail Kumari Devi** cases cited *supra*, it is seen that the Magistrate should give some reasons in support of either of the eventualities. In this case, there is absolutely no reason given by the Magistrate. Therefore, this Criminal Revision Case is partly allowed and M.C.No.2 of 2011 is remanded back to the learned Judicial Magistrate No.2, Thanjavur, for deciding as to the date from which the maintenance amount should be paid with reasons, that is, whether from the date of petition or from the date of order. Until disposal by the learned Magistrate, Murali Viswanathan should pay the monthly maintenance of Rs.15,000/- per month as usual. In other words, the Magistrate will decide whether Murali Viswanathan should pay the maintenance amount of Rs.15,000/- per month from the date of the petition in M.C.No.2 of 2011 or only from 05.04.2016 (the date of order passed by him in M.C.No.2 of 2011) and nothing more.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate Court No.2,
Thanjavur.

+1cc to Mr.Y.Krishnan, Advocate Sr.No.56399

+1cc to Mr.S.Raja Prabu, Advocate Sr.No.56373

SML

VB/JC/SAR4/05/04/2018/3P/4C