



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.08.2018**

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Cr1.R.C. (MD)No.949 of 2017

and

Cr1.M.P. (MD)No.3175 of 2018

WEB COPY

Archana Devi

... Petitioner

Vs.

Mohana Prasath

... Respondent

PRAYER: Petition filed under Section 397 of Criminal Procedure Code, to enhance the amount from Rs.5,000/- to Rs.30,000/- per month as monthly maintenance claimed by the petitioner and setting aside that portion of the order passed in M.C.No.30 of 2016 dated 13.11.2017 on the file of the Additional Chief Judicial Magistrate Court, Madurai, by allowing this Criminal Revision Petition.

For petitioner : Mr.S.Vellaichamy

For Respondent : Mr.R.Venkateswaran

ORDER

Heard the learned counsel for the revision petitioner.

2.The revision petitioner is the wife of the respondent. In the petition filed under Section 125 of Cr.P.C., by the revision petitioner, the Court below has taken note of the claim of Rs.30,000/- as maintenance and the salary income of the respondent. As per Ex.P.9, the respondent herein is earning Rs.60,000/- per month as salary and Rs.12,000/- for special class, totally, the respondent is earning a sum of Rs.72,000/- per month.

3.It is contended by the learned counsel for the petitioner that the maintenance of Rs.5,000/- per month fixed to the revision petitioner is too low. It is further contended that the trial Court has not assigned any reason while fixing a sum of Rs.5,000/- as maintenance. Since, the revision petitioner is living along with her widowed mother, she needs more money to maintain herself and her mother. Since, Rs.5,000/- is very meagre, which will not be sufficient to meet the needs. To enhance the maintenance amount, this revision petition is filed.

4.Heard the learned counsel on both sides and perused all the documents available on records.



5.Ex.P.9, the salary certificate of the respondent indicates that he is employed as a professor in a private Engineering College, drawing a sum of Rs.60,000/- per month, besides Rs.12,000/- for taking tuition. However, there is evidence to show that this job is not a permanent job, which could be terminated with six months notice.

6.The records reveals that the marriage between the parties took place on 21.01.2016. After discard on 07.02.2016, they got separated, hardly one month after marriage. Thereafter, the petition for divorce has been filed by the respondent and which is pending. In view of the said circumstances, application for maintenance has been preferred by the revision petitioner with cumulative.

7.Taking note of the case, the trial Court has fixed Rs.5,000/- as interim maintenance. The reason for fixing Rs.5,000/- is also spelt out in Paragraph -19 of the judgment which reads as under:-

"19. Now the quantum is concerned the petitioner claim Rs.30,000/- as monthly maintenance by stating that the respondent's monthly salary is Rs.72,000/- including his additional salary of 12,000/- for the special class taken by him. To prove the monthly salary of the respondent PW2 is examined on the side of the petitioner. According to the evidence given by PW2 and the documentary evidence Ex.P9 that is the salary certificate of the respondent it is proved on the side of the petitioner that the respondent's salary is Rs.60,196/-. PW2 himself admitted that there is no permanent staff in their university and any one can be removed from their university at any time. RW2 deposed in his cross examination that by giving minimum of 6 months notice only he can removed from service and also stated in his cross examination already a notice was issued against him in the month of September 2017. Whether such a notice issued to him or not is not proved on the side of the respondent by marking the same as document on his side. Rightly or wrongly as per the available evidence at present the respondent's monthly salary is above Rs.60,000/-. In maintenance case there is no ratio to decide the quantum of maintenance according to prove income of the respondent. The quantum is to be decided by the Court taking into consideration of earning capacity of the respondent, the financial status of both the parties and the facts and circumstances involved in the particular case. Hence, on considering of the facts and circumstances involved in this case, this Court found it is fair and reasonable to award a monthly maintenance of



Rs.5,000/- to the petitioner from the date of this petition."

8. Awarding maintenance to the wife, children and parents under Section 125 of Cr.P.C is a interim measure to prevent the dependents from starvation. While fixing maintenance, whether the respondent has sufficient means for include or refuse to maintain, has to be taken note of. In this case, there is an allegation of voluntary desertion against the revision petitioner. On the said ground, the divorce petition is also pending. Therefore, considering the facts and circumstances, the trial Court has fixed Rs.5,000/- as interim maintenance. This Court finds no error to interfere with the order of the trial Court.

9. Accordingly, this Criminal Revision Petition is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(w)

/True Copy/

Sub Assistant Registrar(CS-I)

To:

The Additional Chief Judicial Magistrate Court,
Madurai.

+1cc to Mr.R.Venkateswaran, Advocate Sr.No.81195
+1cc to Mr.M.V.Venkataseshan, Advocate Sr.No.80711

PNN

VB/RSK/SAR1/18.09.2018/3P/4C

ORDER MADE IN
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