

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2019

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.1820 of 2016
and
Crl.M.P.No.893 of 2016

Dr.Elangovan

... Petitioner

vs.

Mrs.Gandhimathi

Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the records and set aside the judgment passed in Criminal Revision Petition in Crl.R.C.No.20 of 2014, dated 14.07.2015, by the Principal District and Sessions Court, Cuddalore, confirming the judgment passed in M.C.No.14 of 2012, dated 03.07.2014, passed by the learned Chief Judicial Magistrate, Cuddalore, Cuddalore District.

For Petitioner : Mr.K.G.Senthil Kumar

For Respondent : Mr.R.Ragavilavan

ORDER

This petition has been filed challenging the order passed in Crl.R.C.No.20 of 2014, by the Principal District and Sessions Court, Cuddalore, confirming the order passed in M.C.No.14 of 2012 by the learned Chief Judicial Magistrate, Cuddalore, fixing a monthly maintenance amount of a sum of Rs.7,500/- payable by the petitioner to the respondent.

2. The trial Court, after considering the entire materials placed before it, came to the conclusion that the petitioner was receiving a monthly pension of Rs.37,300/- and was also receiving allowance for acting as a visiting Professor in a college. The trial Court also gave a finding to the effect that the respondent is getting a pension of Rs.20,000/- and she is also practising as an Advocate. After having come to such a conclusion, trial Court fixed the monthly maintenance at a sum of Rs.7,500/- payable by the petitioner to the respondent. The trial Court took into consideration the fact that one of the

son was mentally unstable and that he is maintained by the respondent.

3. The order of the trial Court was challenged by filing a Revision Petition before the Principal Sessions Judge, Cuddalore, in CrI.R.C.No.20 of 2014. The revision Court, after considering the entire facts and circumstances of the case, confirmed the order passed by the trial Court.

4. The learned counsel for the petitioner submitted that the finding of the trial Court that one of the son was mentally unstable and that he is to be taken care by the respondent is not factually correct. A Guardian Original Petition was filed before the Principal District and Sessions Court, Cuddalore, in G.O.P.No.7 of 2015, seeking for appointing the mother as the guardian of the mentally unstable son and the District Court by judgment dated 05.09.2018, came to a categorical conclusion that the boy was a person with a stable mind and that he had completed his education from the Polytechnic College. The learned counsel for the petitioner further submitted that he has already married and he is now settled in Srilanka. In view of the same, the learned counsel for the petitioner submitted that the Court below was not right in fixing the maintenance amount based on a wrong fact.

5. The learned counsel for the respondent submitted that the petitioner has paid the arrears of maintenance only up to January 2017 and for the subsequent arrears, the respondent has already filed an appropriate petition before the Court below to recover the arrears of maintenance. The learned counsel further submitted that the amount fixed by the Courts below is reasonable and the finding given by the Courts below is not perverse and therefore, this Court cannot interfere with the finding of the Court below and this petition should not be treated as a second revision petition. The learned counsel therefore submitted that this petition is liable to be dismissed by this Court.

6. This Court is aware about the limitations placed in exercise of its jurisdiction under Section 482 of Cr.P.C, more particularly, when two Courts have rendered their findings in favour of the respondent. In the absence of these findings being found to be perverse, this Court cannot exercise its jurisdiction under Section 482 of Cr.P.C and interfere with the same.

7. One important fact that is to be taken into consideration by this Court is the fact that one of the boy, who was held to be a person of unstable mind by the trial Court, is

not factually correct and the same is evident from the order passed by the Principal District Judge, Cuddalore, in the Guardian Original Petition. While, fixing the maintenance amount, this fact was taken into consideration by the trial Court. The trial Court has also given a finding that the respondent is getting a pension of Rs.20,000/- and she is also practising as an Advocate.

8. It is also seen from records that the petitioner is now aged about 65 years and he is a pensioner.

9. Taking into consideration the facts and circumstances of the case, this Court is not inclined to interfere with the order passed by the Courts below in fixing the maintenance amount at a sum of Rs.7,500/- per month payable by the petitioner to the respondent. However, this Court wants to confine the operation of the order only up to August 2019. This would effectively mean that the arrears of maintenance will be calculated at the rate of Rs.7,500/- up to August 2019 and this amount will be paid by the petitioner to the respondent.

10. For the period subsequent to August 2019, liberty is granted to the parties to either come to a settlement by fixing the permanent alimony payable by the petitioner to the respondent, in view of the fact that the marriage between the petitioner and the respondent had been dissolved on 31.07.1997 itself. The other alternative is that the respondent or the petitioner, as the case may be, can move the appropriate Court, seeking for modification/alteration of the maintenance amount payable from September 2019 onwards and the Court can deal with the application in accordance with law after taking into consideration the changed circumstances.

11. This Criminal Original Petition is disposed of accordingly with the above directions. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1.The Principal District and Sessions Judge,
Cuddalore.

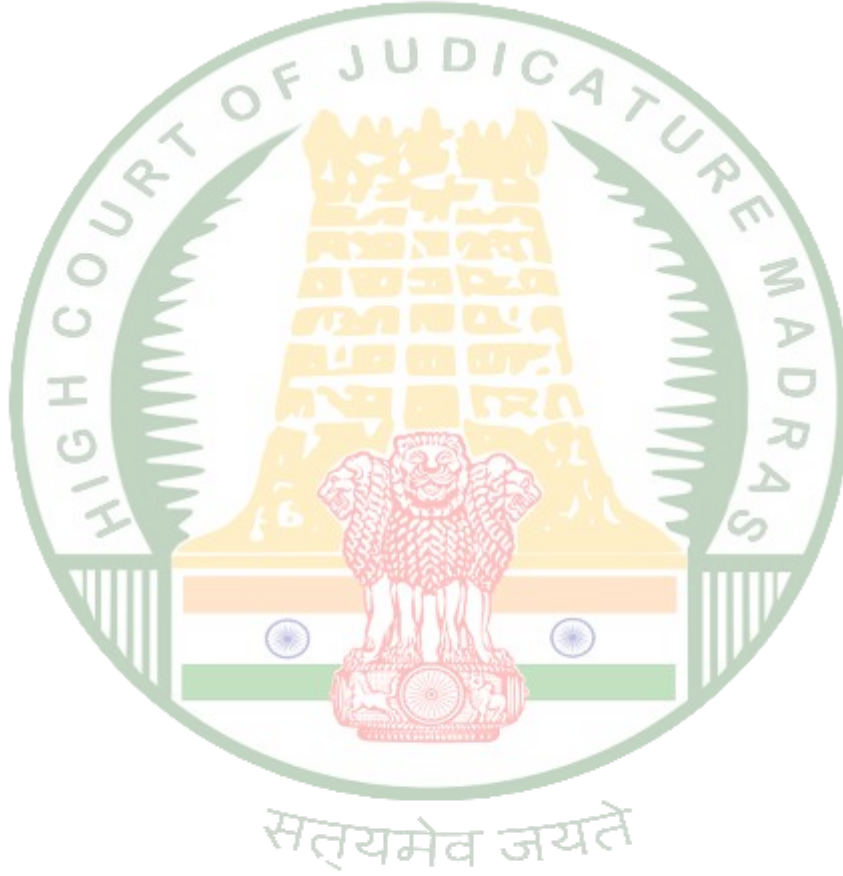
2.The Chief Judicial Magistrate,
Cuddalore, Cuddalore District.

+1cc to Mr.K.G.Senthil Kumar, Advocate SR.No.71460

+2cc to Mr.R.Ragavilavan, Advocate SR.No.70754

CrI.O.P No.1820 of 2016

KK (CO)
GMY (19/09/2019)



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