THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.810 of 2010

1.A.Anuradha
2.Minor B.A.Lakshitha
(Rep. By natural guardian 1st petitioner) ... Petitioners

/Vs/

S.Balaji ... Respondent

PRAYER: Criminal Revision Case filed under sections 397 and 401 of Cr.P.C., to set aside the order of maintenance passed in M.C.No.47 of 2008 dated 14.06.2010 on the file of the Chief Judicial Magistrate, Vellore and enhance the rate of maintenance at the rate of Rs.10,000/- to the 1st petitioner and Rs.7,000/- to the 2nd petitioner.

For Petitioners: Ms.Malarvizhi

For Respondent : Mr.S.Arun Kumar

O R D E R

The Criminal Revision Case has been filed, seeking enhancement of maintenance passed in M.C.No.47 of 2008 dated 14.06.2010 on the file of the learned Chief Judicial Magistrate, Vellore.

2.The learned counsel for the revision petitioner would submit that M.C.No.47 of 2008 was filed praying for monthly maintenance at Rs.10,000/- for the 1st petitioner and Rs.7,000/- for the 2nd petitioner towards food, clothing, residence and medical expenditures, whereas the learned Chief Judicial Magistrate, Vellore, having held that the average monthly income of the respondent is ranging from Rs.34,000/- to 50,000/- per month and having fixed the monthly income of the respondent at Rs.30,000/- per month, erred in fixing the maintenance at Rs.4,000/- to the 1st petitioner and Rs.2,000/- to the 2nd petitioner. She would submit that the respondent was gainfully employed in Wipro Technologies and that he has been avoiding to pay the maintenance to the revision petitioners and with great difficulty, the petitioners were able to file the execution petition to get arrears from the respondent. Though, an amount of Rs.7 lakhs was paid as arrears, the revision petitioners were made to run from pillar

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to post, to execute the order. She would further submit that the 1st petitioner is not employed and she is unable to maintain herself and her daughter and they are at the mercy of her father and brother of the 1st petitioner. She would also submit that in the present stage, the amount fixed by the learned Chief Judicial Magistrate, Vellore, is too less and that the 2nd petitioner is studying 7th Std in a school and that the 1st petitioner has to take care of all the education expenses for her child, who is the minor daughter of the respondent. All along, the 1st petitioner has been taken care by her father and her brother and the respondent-husband had been avoiding to take care of the revision petitioners and prayed for enhancement of maintenance.

3.The learned counsel for the respondent would submit that the respondent has lost the job in Wipro Technologies and presently working in Kevin Industries, Hyderabad with salary of Rs.30,000/- per month and would submit that the trial Judge has rightly passed the order. He would further submit that the 1st petitioner being an post graduate degree holder can very well get employed in any of the private organisations, whereas she is wilfully refusing to go to a job. He would further submit that the respondent has to take care of his aged parents who are living with him and prayed to dismiss the Criminal Revision Case seeking for enhancing the maintenance amount.

4.However, it is to be noted that no materials have been produced by the learned counsel for the respondent to support his contention that the respondent has lost his job in Wipro Technologies and presently working in Kevin Industries, Hyderabad with the monthly salary of Rs.30,000/- per month. Further it is admitted that the respondent is presently earning Rs.30,000/- per month.

5.I have gone through the materials on record. The case of the revision petitioners is that the 1st petitioner married the respondent on 25.01.2016 according to Hindus rites and custom at Dhanapal Thirumana Mandapam, Arani. Jewels were given at the time of marriage and the marriage was also registered on the same day before the Marriage Registrar, Arani. All the jewels, utensils and silver items of the 1st petitioner are with the respondent. After marriage, the respondent got job at Hyderabad, where the 1st petitioner lived happily for two months. After that the respondent's parents joined them and the respondent had ill-treated the 1st petitioner. Thereafter, the 1st petitioner became pregnant and that she was sent to her parents house at Vellore, for 'Valai Kappu function', and thereafter, she was taken to Arani in December 2006, and the 2nd petitioner was born on 26.01.2007. Though, the birth of 2nd petitioner was informed to the respondent, he did not come and see the child and that he deserted the 1st petitioner and the child. When the 1st petitioner had gone to Hyderabad to join the respondent she

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was not allowed to enter the house. At the intervention of the neighbours she was allowed into house. Since, there was continued ill-treatment and harassment in the matrimonial house, the parents of 1st petitioner brought her back to their house and that on 26.11.2007, a panchayat was convened and the respondent assaulted the 1st petitioner in the presence of elders and he had also abused the parents of the 1st petitioner in filthy language. Further, he used to send vulgar messages by way of SMS. While so, the respondent filed Divorce Petition in Family Court at Hyderabad in O.P.No.921 of 2008.

6.The 1st petitioner contended that the respondent working as Software Consultant and getting salary of Rs.60,000/- per month and he was also doing private job work and getting Rs.20,000/- per month. The 1st petitioner has no income or property of her own and now she was under the care and custody of her parents. Hence, she prayed for maintenance of Rs.10,000/- for herself and Rs.7,000/- for the 2nd petitioner.

7.The learned Chief Judicial Magistrate, Vellore, taking into consideration the petition, counter filed by the respondent and evidences let in on behalf of the petitioner and placing reliance on Ex.P.4, the Bank Account Statement of the respondent and finding that he was earning salary ranging from Rs.34,000/- to Rs.50,000/- per month fixed the monthly income of the respondent as Rs.30,000/- per month and thereupon the quantum of maintenance at Rs.4,000/- per month for the 1st petitioner and Rs.2,000/- per month for 2nd petitioner was fixed.

8.Against the order of the learned Chief Judicial Magistrate, Vellore in M.C.No.47 of 2008 dated 14.06.2010, the present Criminal Revision Case has been filed seeking for enhancement of maintenance.

9.Heard the learned counsel for the petitioners as well as the learned counsel for the respondent and perused all the materials available on record. Admittedly, though the respondent is stated to have lost his job in Wipro Technologies as per the admission of the learned counsel for the respondent, he is presently working in Kevin Industries, Hyderabad with the salary of Rs.30,000/- per month.

10.Taking into consideration the facts and circumstances of the case, this Court is of the opinion that having fixed the monthly income of the respondent to be Rs.30,000/-. The maintenance amount of Rs.4,000/- per month to the 1st petitioner and Rs.2,000/- per month to the 2nd petitioner is much less compared to the cost of living index. It is stated that the 2nd petitioner is now studying 7th Std and that the 1st petitioner is dependent on her parents and her brother and that she has no means to support her and her child. I am of the opinion that the amount of Rs.4,000/- per month to the 1st petitioner and Rs.2,000/- per month to the 2nd petitioner is

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not sufficient and thereby the monthly maintenance is enhanced to Rs.7,500/- per month to the 1st petitioner and Rs.5,000/- per month to the 2nd petitioner. The Criminal Revision Case is allowed as stated above.

Sd/-
Assistant Registrar(CS)

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Sub Assistant Registrar

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To
1.The Chief Judicial Magistrate, Vellore.

2.The Section Officer, VR Section
High Court of Madras.

+1cc to Ms.Malarvizhi, Advocate SR.No. 17890

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A.SK(25/04/2019)

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