

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.Nos.1237 & 1041 of 2012 &
Crl.R.C.No.23 of 2014 and M.P.No.1 of 2012

1. Enitha Suganthi
2. Minor Rohith
represented by his mother
& natural guardian 1st respondent ...Petitioners in
Crl.R.C.1237/2012 & 23/2014

Sundar Raj ...Petitioner in Crl.R.C.1041/2012

Vs.

S.Sundarraja ... Respondent in Crl.R.C.1237/2012 & 23/2014

1. Enitha Suganthi
2. Minor Rohith S
represented by his mother & natural guardian
1st respondent ... Respondents in Crl.R.C.1041/2012

Prayer in Crl.R.C.No.1237/2012: This Criminal Revision filed is under Sections 397 and 401 of Code of Criminal Procedure to allow the revision by setting aside the order dated 31.07.2012 made in M.C.No.5 of 2005 on the file of the Judicial Magistrate, Ambattur, by fixing the maintenance for the petitioners at Rs.7500/- each as claimed in the above M.C.No.5 of 2005.

Prayer in Crl.R.C.No.1041/2012: This Criminal Revision is filed under Sections 397 and 401 of Code of Criminal Procedure to revise the order of the learned Judicial Magistrate, Ambattur, Chennai, made in M.C.No.5 of 2005 dated 31.07.2012.

Prayer in Crl.R.C.No.23/2014: This Criminal Revision is filed under Sections 397 and 401 of Code of Criminal Procedure to allow the revision by setting aside the order dated 29.11.2013 made in M.C.No.5 of 2005 on the file of the Judicial Magistrate, Ambattur.

For Petitioners : Mr.R.Saravanakumar
in R.C.1237/2012 & 23/2014
:Mr.S.Palani Velayutham in R.C.1041/2012

For Respondents : Mr.S.Palani Velayutham
in R.C.1237/2012 & 23/2014
Mr.R.Saravanakumar in R.C.1041/2012

COMMON ORDER

Since the issue to be decided in all the above criminal revision cases is one and same and hence all the revisions are disposed of by this common order.

2 Petitioners in Crl.R.C.No.1237 of 2012 and 23 of 2014 are wife and child and respondent is husband. The husband has also filed revision before this Court in Crl.R.C.No.1041 of 2012. For the sake of convenience the parties are herein after referred to as per their relationship.

3 The wife had filed a maintenance casse in M.C.No.5 of 2005 seeking maintenance and the learned Magistrate, after hearing both the parties, by order dated 31.07.2012, awarded maintenance at Rs.5,000/- p.m. each to the wife and child. Aggrieved against the same, wife has filed a revision in Crl.R.C.No.1237 of 2012 for enhancement and husband has also filed a revision in Crl.R.C.No.1041 of 2012 to set aside the award of maintenance passed by the Magistrate. The wife has stated that the husband has not paid some amount of maintenance as directed by this Court, and it has been recorded by the learned Magistrate in M.C.No.5 of 2005 by order dated 29.11.2013 that the order of this Court is being regularly complied with by the husband, against which, the wife has also filed Crl.R.C.No.23 of 2014.

4 According to learned counsel appearing for the wife and child, the husband was working as Assistant Civil Surgeon in Government Hospital and earning more than Rs.10,000/- at the time filing of maintenance case and also is running a private clinic and through the same, he is earning more than Rs.30,000/-. The wife has no means to maintain herself and the child. The husband, despite having sufficient means, has failed to maintain his wife and child. The learned Magistrate has failed to consider the earning capacity of the husband and erroneously awarded a sum of Rs.5,000/- each as maintenance, which warrants interference.

5 According to learned counsel appearing for the husband, the husband is retired from service and now he is aged about 60 years and getting only pension, which is not sufficient to maintain himself. Further the petitioner could not maintain himself. Decree of divorce was also granted and the husband is living separately. The learned Magistrate has erroneously awarded maintenance at Rs.5000/- each, which is liable to be set aside.

6 Heard the learned counsel appearing on either side and perused the materials available on record.

7 Relationship between the parties is not in dispute and they are living separately and paternity of the child are also not in dispute. It is seen that the husband was working as Assistant Civil Surgeon at the time of filing of maintenance case and was earning Rs.11,000/-. There is no proof filed by the husband that the wife has sufficient means to maintain herself and the child. The husband has not even produced his pay slip to prove his earnings. During the dispute period, two pay commissions have been implemented and hence now the petitioner would earn atleast Rs.50,000/-, even he is retired from his service. Further, in the cross examination he admitted that he has a Car and also running a private Clinic. There is no retirement for the professionals, specifically for the person, who is Doctor in profession. Under these circumstances, the award of Rs.5,000/- each to the wife and child is not sufficient and considering the cost of living and earning capacity of the husband this Court is inclined to enhance the maintenance.

8 Accordingly, the award of Rs.5,000/- each to the wife and child is enhanced to Rs.7500/- to wife and Rs.7500/- to the child and same shall be paid by the husband from the date of filing of maintenance case and for the child the maintenance shall be paid till he attains majority. The husband is directed to pay arrears of maintenance less the amount already been paid.

9 The criminal revision case in CrI.R.C.No.1237 of 2012 filed by the wife and child is allowed and the maintenance is enhanced as stated above and the criminal revision case in CrI.R.C.No.1041 of 2012 filed by the husband is dismissed. Consequently connected miscellaneous petition is closed.

10 As far as criminal revision case in CrI.R.C.No.23 of 2014 filed by the wife is concerned, it is admitted by the husband that the disputed amount paid by the husband was not accepted by the wife. Hence the order dated 19.11.2013 made in M.C.No.5 of 2005 is hereby set aside and the husband is directed

to pay the amount of Rs.42,500/- immediately to the wife preferably within a period of four weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

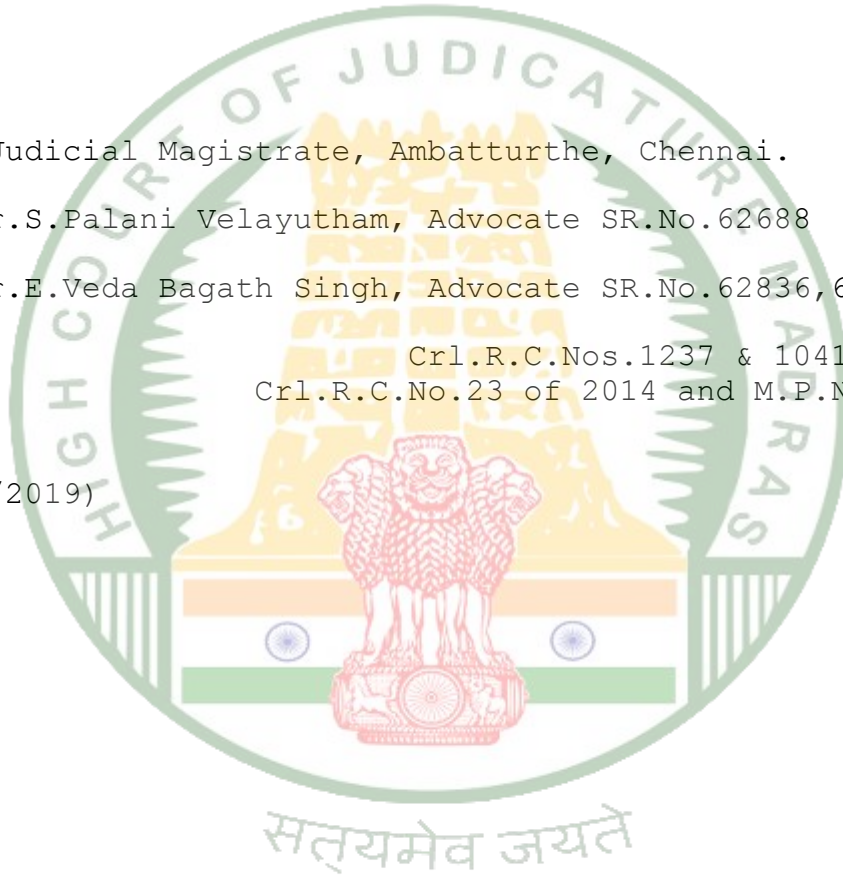
The Judicial Magistrate, Ambatturthe, Chennai.

+1cc to Mr.S.Palani Velayutham, Advocate SR.No.62688

+3cc to Mr.E.Veda Bagath Singh, Advocate SR.No.62836,62837,62838

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JP (CO)
GMY (27/09/2019)



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