

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :04.03.2019

Coram:

The Honourable Dr.Justice G.Jayachandran

Crl.R.C.No.400 of 2012
and M.P.No.1 of 2012

N.Tamil Selvan .. Petitioner/Respondent

/versus/

1.R.Poongodai

2.Minor Nishalini

.. Respondents/Petitioners

Criminal Revision Case has been filed under Section 397 and 401 of Criminal Procedure Code praying to set aside the order passed by learned Judicial Magistrate No.II, Kancheepuram in M.C.No.6 of 2007 dated 25.01.2012.

For Petitioner : Mr.K.M.Balaji

For Respondents : Mr.Mr.N.Kolandaivelu

ORDER

This Criminal Revision Case is directed against the maintenance fixed by the learned Magistrate under Section 125 Cr.P.C. The first respondent is the petitioner's wife and the second respondent is the petitioner's minor daughter. The revision petitioner herein had failed to maintain them and deserted them. The first respondent forced to file a petition in Maintenance Case No.6 of 2007, before the learned Judicial Magistrate No.II, Kancheepuram.

2. From the material evidence, the learned Magistrate has found that the revision petitioner is gainfully employed in a private company and voluntarily deserted his wife and child without maintaining them. The respondent having no other source to maintain themselves are entitled for a sum of Rs.2000/- (wife) and Rs.1000/- (daughter) respectively per month for their maintenance.

3. Aggrieved by the maintenance amount fixed, the revision petition is filed.

4. Heard the learned counsel appearing for the petitioner and the learned counsel for the respondents.

5. The learned counsel for the revision petitioner would submit that Ex.D.1 to Ex.D3 are the documents executed by the first respondent, wherein she has relinquished her right to claim any maintenance and taken back her sreedhana property. After receiving the sreedhana property left the company of her husband voluntarily. So the first respondent herein is not entitled for any maintenance. Further, he would also submit that the revision petitioner is a differently abled person with 40% disabled. He does not have sufficient earning capacity to meet his own needs. In such circumstances fixing of Rs.2000/- for his wife and Rs.1000/- for his minor daughter is excessive. The learned counsel would also submit that pending revision petition, the first respondent is selected for the post of Teacher and now employed in a Government school as a teacher.

6. This Court finds that the above said submissions does not carry any merit to interfere in the revision. First of all, in this case the waiver of statutory right is not a voluntary action. The wife had been deprived of maintenance by her husband. When she is entitled to claim maintenance under Section 125 Cr.P.C., and also on behalf of the child any undertaking given during panchayats for getting back her sreedhana property has no valid force. Therefore, Ex.D1 to Ex.D3 have no bearing. As regard to the plea of disability claimed by the revision petitioner is concerned, the Courts below have found that he has sufficient income by gainfully employed in a private company. Therefore, this facts also does not warrant any interference.

7. The submission made by the learned counsel for the revision petitioner that the first respondent is now gainfully employed as Government servant and therefore, she is not entitled for maintenance under Section 125 Cr.P.C., can be considered based on the proof of material facts, which are not presently before this Court.

8. Under Section 125 Cr.P.C., the maintenance awarded can be modified, altered or revoked at any time in case of change in circumstances. If the first respondent is gainfully employed and capable of maintaining herself, the revision petitioner can seek for proper modification, as far as his wife the first respondent is concerned. So the present order impugned in revision petition is concerned, this Court finds that a sum of Rs.2000/- for his wife and Rs.1000/- for her child is the bare minimum for a

decent living. Therefore no merit in the revision petition to interfere.

9. Hence, the Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpl

To

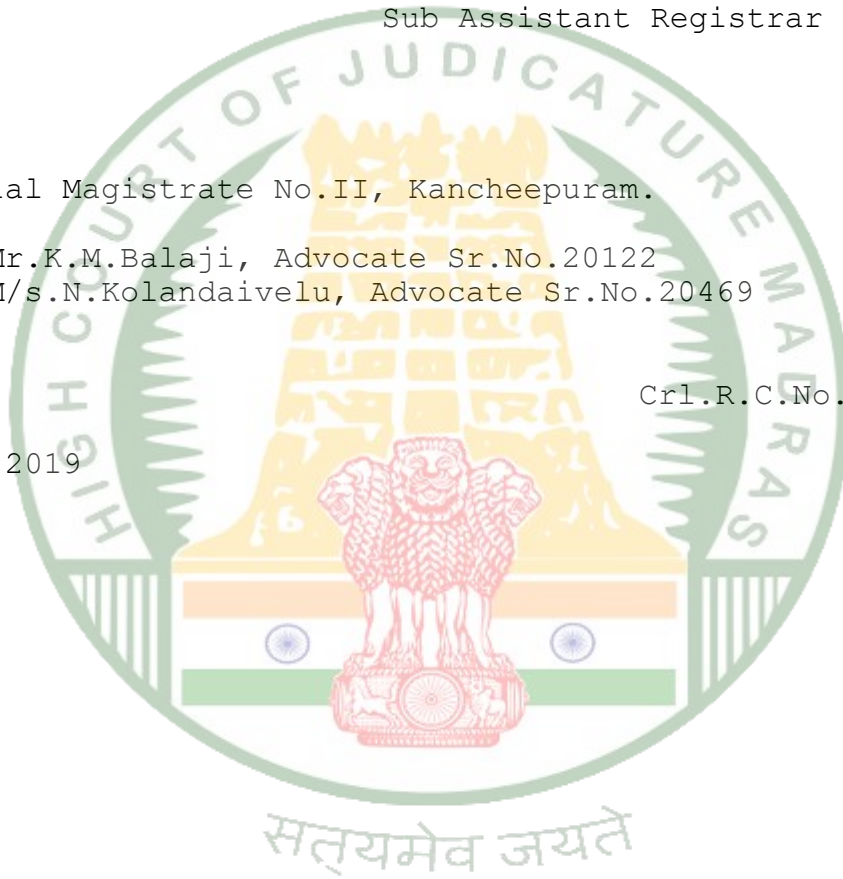
The Judicial Magistrate No.II, Kancheepuram.

+1 cc to Mr.K.M.Balaji, Advocate Sr.No.20122

+1 cc to M/s.N.Kolandaivelu, Advocate Sr.No.20469

CrI.R.C.No.400 of 2012

KJ(CO)
CSL/25.03.2019



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