

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.570 of 2012 and
M.P.No.1 of 2012

Sundaramurthy

...Petitioner/Respondent

Vs.

1. Nalini

2. Minor Harikrishnan

3. Minor Muralikrishnan

...Respondents/Petitioners

This Criminal Revision case is filed under Sections 397 and 401 of Code of Criminal Procedure to set aside the order of maintenance dated 12.03.2012 passed in M.C.No.38 of 2010 by the learned Chief Judicial Magistrate, Vellore, granted to the first respondent and fix the maintenance at Rs.750/- per month for each of the respondents 2 & 3.

For Petitioner : Mr.P.Ganapathy

For Respondents : Mr.R.Nalliyappan

ORDER

The criminal revision has been filed against the order of maintenance dated 12.03.2012 passed in M.C.No.38 of 2010 by the learned Chief Judicial Magistrate, Vellore.

2 The revision petitioner is husband, first respondent is wife and second & third respondents are minor children. Initially the respondents had filed maintenance case under Section 125 of Cr.P.C. seeking maintenance, in M.C.No.38 of 2010 before the learned Chief Judicial Magistrate, Vellore. The learned Magistrate, after enquiry, by order dated 12.03.2012 awarded maintenance at Rs.2,000/- to 1st respondent/wife and Rs.1,500/- to each of the minor respondents 2 & 3. Aggrieved against same, husband is before this Court with the present criminal revision case.

3 According to learned counsel appearing for the

petitioner/husband, the first respondent/wife has left the matrimonial home without any valid reason and since 2005 they are living separately. The petitioner has filed a petition for divorce on the ground of desertion, which was dismissed, against which he filed an appeal and the same is pending. Since the first respondent/wife has left the matrimonial home without any valid reason and deserted the petitioner/husband, she is not entitled for any maintenance. The learned Chief Judicial Magistrate has failed to consider the facts and erroneously awarded maintenance, which warrants interference.

4 According to learned counsel appearing for the respondents, the first respondent has no means to maintain herself and the children. The petitioner husband has filed a petition seeking divorce, which was dismissed, which itself shows that the first respondent/wife has left the matrimonial home with valid reason and therefore the award of maintenance passed by the learned Magistrate does not call for any interference.

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

6 It is seen that relationship between the parties and paternity of the minor respondents 2 & 3 are not in dispute and they are living separately. Admittedly the petitioner is Auto Driver and the respondents have no means to maintain themselves. However, the learned Magistrate found that the petitioner, being Auto Driver could earn atleast Rs.200/- per day and he has to maintain his wife and children. The person, like Auto Driver, will get uncertain income and it differs day by day. Considering the avocation of the petitioner and his uncertain income, this Court is inclined to modify the award passed as against the first respondent wife.

7 Accordingly the petitioner is directed to pay a sum of Rs.1500/- as maintenance per month to the first respondent/wife instead of Rs.2,000/- and considering the fact that the minor respondents 2 & 3 are school going children, the award of Rs.1500/- to each of the respondents 2 & 3 passed by the Magistrate is reasonable and the same is confirmed.

8 With the above modifications, this criminal revision case is disposed of. Consequently connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS)

/true copy/

Sub Asst. Registrar

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To

1.The Chief Judicial Magistrate, Vellore.

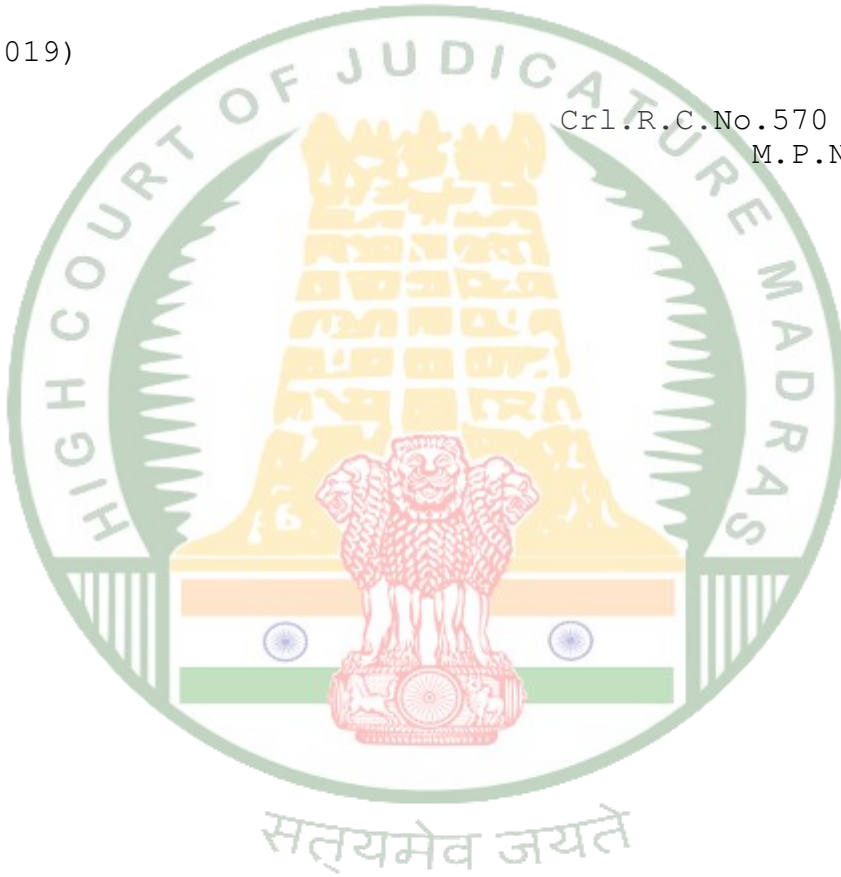
CC: The Section Officer
Criminal Section, High Court,
Madras-104.

+1cc to Mr.R.Nalliyappan Advocate, SR.66899

+1cc to Mr.R.Margabandhu Advocate, SR.66810

VBA(CO)
CB(01/10/2019)

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