

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.04.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.Nos.195 and 969 of 2015

Sangeetha ... Petitioner in Crl.R.C.No.195/2015/
Respondent in Crl.R.C.No.969/2015

Vs.

1.Janarthanan
2.K.M.Shanmugam
3.Sagunthala Respondents in Crl.R.C.No.195/2015/
Petitioner in Crl.R.C.No.969/2015

Prayer in Crl.R.C.No.195/2015: Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to setting aside the order dated 08.11.2013 made in C.A.No.26 of 2012 on the file of the Additional Sessions Judge, Dharmapuri in M.C.No.5 of 2011 on the file of the District Munsif cum Judicial Magistrate, Pennagaram.

Prayer in Crl.R.C.No.969/2015: Criminal Revision case filed under Section 397(1) r/w 401 of Cr.P.C. praying to call for the records in C.A.No.22 of 2013 dated 08.11.2012 by the Additional Sessions Judge, Dharmapuri by confirming the order passed in M.C.No.5 of 2011 dated 31.07.2012 by the District Munsif cum Judicial Magistrate, Pennagaram.

For Petitioner in
Crl.O.P.No.195/15 and for Sole
Respondent in Crl.RC 969/15 : Mr.I.Abrar MD Abdullah

For Respondents
No.1 and 3 in Crl.O.P.NO.195/15
and for Petition in CrlRC 969 of 2015 : Mr.Gandhi Kumar

COMMON ORDER

These Criminal Revision Cases are directed against the findings of the Courts below regarding the award of maintenance to the wife and children. The revision petitioner in Crl.R.C.No.195 of 2015, Tmt.Sangeetha is the wife of Janarthanan in M.C.No.5 of 2011. She sought for protection under the

Domestic Violence Act seeking residential order, monetary relief and compensatory relief.

2. According to the revision petitioner, she and the first respondent got married on 10.07.2003. Through wedlock two children were born. Due to his ill-habit, the first respondent started torturing the petitioner both physically and mentally. The other respondents, who are her in-laws, were in support of the first respondent. Therefore, she was sent out from the matrimonial house questioning her fidelity and demanding dowry. In the said circumstances, the application was filed seeking for residential order, monetary relief and compensation.

3. The same was contested by the first respondent and others on the ground that the petitioner due to her suspicious behaviour started causing mental cruelty to the first respondent linking him with other ladies. She used to lock the room and threatened to commit suicide and also torture the children. Only as a counter blast to the divorce petition filed by the respondent, the petition was filed with false allegation and relief particularly for the residential order.

4. The respondent has submitted that though the parental home at Papparapatty is occupied by his parents and was not the place of residence of the petitioner and the first respondent, she insist upon residential right in that house. Due to the avocation, they set the family at Hosur and living there till they got separated. Regarding the income, the first respondent would submit that he is not earning sufficient income as claimed by the petitioner. Though he was initially running study centre for Annamalai University and computer centre, he lost his income under change in policy of University.

5. The Trial Court after considering the rival submissions, ordered Rs.5,000/- per month for the revision petitioner/wife and Rs.3,500/- each to the children as monthly maintenance, which should be paid on or before 5th of every month. For an alternate accomodation, the Court directed the first respondent to rent a house proportionate and comfortable to the petitioner and the children and the same shall be met out by the first respondent.

6. The appeal is preferred by the revision petitioner/wife regarding the residential order, which was dismissed. Hence, the present revision petition in CrI.R.C.No.195 of 2015 is filed.

7. On perusing the records and the submissions made by the learned counsel appearing for the revision petitioner, the learned counsel for the first respondent would submit that as wished by the petitioner he was initially paying Rs.3000/- and

since the petitioner has shifted the house, which caused rent of Rs.4,000/- since it is convenient for her and children to take them to school, the respondent has regularly paid monthly rent through bank transfer. In the said circumstances, this Court finds no reason to interfere with the findings of the Courts below regarding the residential order.

8. In Crl.R.C.No.969 of 2014, the respondent herein has filed the revision petition challenging the order passed by the Courts below regarding maintenance.

9. The contention raised by the husband is that he has lost his substantial income due to the change in the policy of University. The Trial Court as well as the Lower Appellate Court have not taken note of it and awarded Rs.5,000/- for his wife and Rs.3,500/- for each of the children totally Rs.12,000/- per month toward maintenance which is on the higher side comparing to his income as well as the income of the first respondent's wife, who is employed as a Teacher.

10. To counter the said submissions, the learned counsel for the wife has submitted all the documents indicating that Janarthanan is still running computer training centre at Dharmapuri and Hosur under the agies of Annamalai University at Dharmapuri earning substantially. What is directed to be paid is not in consonance with his status and income. Even the said maintenance amount, the petitioner in Crl.R.C.No.969 of 2015 is not paying regularly. Only after application before the Court, he has deposited the money. Memo of calcuation filed by the petitioner is extracted below:

Calculation Memo filed by the Petitioner

- As per order dated 05.05.2011 in MC.No.5 of 2011 awarded maintenance is Rs.12,000/- (5000, 3500, 3500)
- Till the order dated 24.09.2014 of this Hon'ble Court in Crl.R.C.No.194 of 2014 Rs.4,87,600/- (3 years 4 months and 19 days)
- The petitioner received on 24.09.2014 Rs.3,52,000/-. Balance is Rs.135,600/- which is deposited in Judicial Magistrate at Pennagaram.
- The respondent arrears of Rs.56,000 is till March 2019.
- Total Deposited amount in Judicial Magistrate at Pennagaram is Rs.135,600/-
- Total pending arrear amount till March 2019 is Rs.56,000/-

11. Considering the rival submissions, this Court finds that the maintenance fixed by the Courts below is based on the evidence let in before the Court at the time of trial. Rs.5,000/ for a adult woman and Rs.3,500/- for two school going minor children is not on higher side by any stretch of imagination. Hence, this Court is not inclined to interfere with. There is no

change in circumstances to reduce the maintenance amount which the respondent husband has canvased. It is always open to the parties to challenge with all materials for modification of maintenance, but the petitioner cannot do so without paying the arrears of maintenance, which has already been awarded.

12. It is brought to the notice before this Court by the learned counsel for the petitioner Sangeetha that the huge sum is due from the respondent. If the calculation memo extracted above is so, the respondent/husband is directed to deposit the entire amount to the bank account, if he already deposited any money in the Court, Sangeetha/Petitioner is permitted to withdraw the same. The learned counsel appearing for revision petitioner Sangeetha is directed to furnish the bank account of Sangeetha to the counsel for the respondent to facilitate the respondent to deposit the maintenance amount directly in the bank account of Sangeetha and hereinafter the respondent husband is directed to pay the monthly maintenance into the bank account maintained by Sangeetha.

13. In the result both the Criminal Revision Case are disposed of.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The District Munsif-cum-Judicial Magistrate,
Pennagaram.

2.The Additional Sessions Judge,
Dharmapuri.

+1cc to M/S.I.Abrar Md Abdullah, Advocate Sr.36848
+1cc to Mr.K.Gandhi kumar, Advocate Sr.36945

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