

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.7714 of 2019

N.Prabhakaran

.. Petitioner/Respondent

Vs.

M.Nirmala

.. Respondent/ Petitioner

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in the order dated 13.11.2018 in CRP.No.1 of 2018 (on the file of the Additional District and Sessions Court (Fast Track Court), Arani) in M.C.No.4 of 2012 in the Court of the Judicial Magistrate, Arani and set aside the same, so far as it relates to interim maintenance of Rs.4,000/- including arrears of maintenance payable by the petitioner to his wife, the respondent herein.

For Petitioner : Mr.P.Pugalenthir

For Respondent : Mr.J.Dev Eshwar

O R D E R

This petition has been filed challenging the order passed by the Court below modifying the maintenance amount fixed by the trial Court in M.C.No.4 of 2012.

2.The respondent is the wife of the petitioner. She filed a petition seeking for maintenance under Section 125 of Cr.P.C. for herself and for the minor daughter. The learned Judicial Magistrate, Arani by an order dated 28.12.2015 fixed the maintenance amount payable as Rs.4,000/- for the wife and Rs.2,500/- for the minor daughter.

3.This order came to be challenged by the wife and daughter by filing a criminal revision before the Additional

District Court (Fast Track Court) Arani in CRP.No.1 of 2018 and they sought for enhancement of maintenance. The revision Court by an order dated 13.11.2018 sustained the maintenance in so far as the wife is concerned and increased the maintenance by a sum of Rs.500/- for the minor daughter. Thereby the petitioner was directed to pay a sum of Rs.4,000/- towards monthly maintenance to the wife and Rs.3,000/- towards monthly maintenance to the minor daughter. This order has been put to challenge before this Court.

4.It is seen from the order that the maintenance amount itself has been fixed based on the consent given by the petitionoer to the effect that he is willing to pay a sum of Rs.7,000/- towards maintenance for the wife and minor daughter put together. That apart the petitioner has not challenged the order passed by the learned Magistrate under Section 125 of Cr.P.C.

5.The learned counsel for the petitioner submitted that the petitioner has taken voluntary retirement from Army due to his ill-health and therefore the petitioner is not in a position to pay the maintenance amount as fixed by the Court below.

6.The learned counsel for the respondent submitted that there are absolutely no materials to show that the petitioner suffered from any ailment except for the oral statement made by the learned counsel for the petitioner. The learned consel further submitted that there is absolutely no ground to interfere with the order passed by the Court below.

7.This Court has already found that the order has been passed by the Court below based on the consent given by the petitioner to pay the monthly maintenance of a sum of Rs.7,000/- to the wife and minor daughter. The petitioner has also not challenged the order passed by the learned Magistrate. Therefore, this Court does not find any ground to interfere with the order passed by the Court below. Therefore, the order passed by the Court below has to be sustained as it is.

8.If the petitioner is not in a position to pay the maintenance amount, for any reason and requires any modification or alteration in the maintenance amount, he has to file an appropriate petition under Section 127 of Cr.P.C. seeking for modification/alteration of the maintenance amount. That cannot be a ground to challenge the order passed by the Court below.

9.In the result, this Criminal Original Petition is dismissed and it is left open to the petitioner to work out his remedy in accordance with Section 127 of Cr.P.C. Till the

maintenance amount is altered, the petitioner is duty bound to pay the maintenance amount fixed by the Court below to his wife and minor daughter.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

vs

To

1.The Additional District and Sessions Judge
(Fast Track Court), Arani.

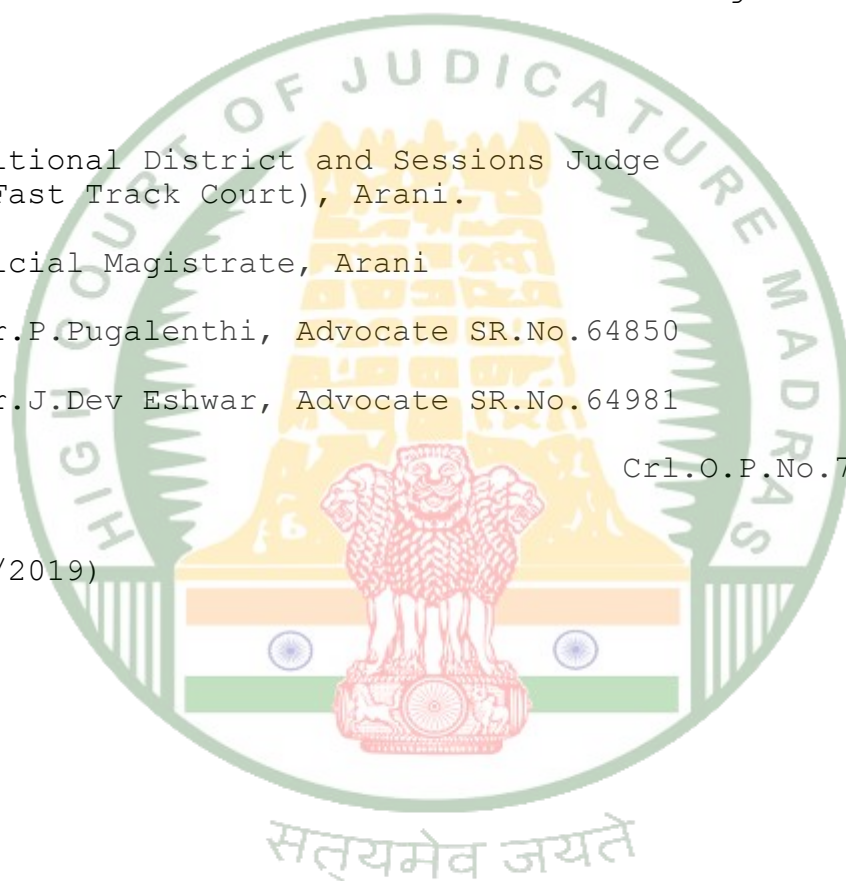
2.The Judicial Magistrate, Arani

+1cc to Mr.P.Pugalenth, Advocate SR.No.64850

+1cc to Mr.J.Dev Eshwar, Advocate SR.No.64981

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RSI (CO)
GMY (04/09/2019)



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