

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2019

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.R.C.No.547 of 2019
and
Crl.MP.No.7378 of 2019

Krishnamurthy
S/o.Manicka Mudaliyar

.. Petitioner/ Respondent
/Respondent

-Vs-

Kasthuri
W/o.Krishnamurthy

..Respondent/ Petitioner
Petitioner

Criminal Revision Petition filed under section 397 r/w 401 of the Code of Criminal Procedure to set aside the order dated 22.01.2019 made in C.M.P.No.135 of 2018 in M.C.No.7 of 2005 on the file of the Judicial Magistrate Court No.V, Vellore and to allow the above Criminal Revision Case.

For Petitioner : Mr.G.Vinodh Kumar

For Respondent : Mr.Arun Anbumani

O R D E R

This Criminal Revision has been filed seeking to set aside the order dated 22.01.2019 made in C.M.P.No.135 of 2018 in M.C.No.7 of 2005 on the file of the Judicial Magistrate Court No.V, Vellore and to allow the above Criminal Revision Case.

2. For the sake of convenience, the petitioner and the respondent will be referred to by their name.

3. Krishnamurthy got married to Kasthuri some three decades back. Their marital life ran into rough weather resulting in the spouses getting estranged. Kasthuri filed M.C.No.7 of 2005 before the Judicial Magistrate, Vellore under Section 125 Cr.P.C. against Krishnamurthy seeking maintenance, in which, a sum of Rs.750/- p.m. was awarded as maintenance. Thereafter, Kasthuri filed petitions under Section 127 Cr.P.C. from time to

time, in which, the monthly maintenance was steadily enhanced and ultimately, in CrI.M.P.No.846 of 2014, this Court fixed the monthly maintenance at Rs.2,500/- p.m. Kasthuri filed C.M.P.No.135 of 2018 in M.C.No.7 of 2005 under Section 127 Cr.P.C seeking enhancement of maintenance. On notice, Krishnamurthy entered appearance and contested the claim. Kasthuri examined herself as P.W.1 and marked Ex.P1 & Ex.P2. No witness was examined on behalf of Krishnamurthy nor was any document marked. After considering the evidence on record, the learned Judicial Magistrate No.5, Vellore, by order dated 22.01.2019 in C.M.P.No.135 of 2018, has enhanced the maintenance amount from Rs.2,500/- p.m. to Rs.5,000/- p.m. payable from 21.06.2017, challenging which, Krishnamurthy is before this Court.

4. Heard Mr.G.Vinodh Kumar, learned counsel appearing for Krishnamurthy and Mr.Arun Anbumani, learned counsel appearing for Kasthuri.

5. The learned counsel for Krishnamurthy contended that Krishnamurthy is 72 years old and he has no means to pay Rs.5,000/- p.m. to Kasthuri that has been ordered by the trial Court. He has also submitted that Krishnamurthy is hospitalized.

6. Per contra, the learned counsel for Kasthuri submitted that Kasthuri is suffering from Cancer and she is fighting for her life and that Krishnamurthy is a retired Tahsildar and is drawing a handsome pension.

7. This Court gave its anxious consideration to the rival submissions.

8. Kasthuri has adduced sufficient evidence to show that she has not been able to maintain herself with the paltry sum of Rs.2,500/-p.m. that was being paid by Krishnamurthy.

9. The learned counsel for Krishnamurthy submitted that Kasthuri is not a destitute and she is being taken care of by her son viz., Damodaran, who is drawing a salary of Rs.30,000/- p.m.

10. Be that as it may, on totality of facts and circumstances obtaining in this case, this Court is of the view that interests of justice will be served, if the monthly maintenance is reduced from a sum of Rs.5,000/- p.m. to Rs.4,000/- p.m.

11. Accordingly, the Criminal Revision case is partly allowed and the order dated 22.01.2019 passed by the Judicial Magistrate No.V, Vellore in C.M.P.No.135 of 2018 in M.C.No.7 of 2005 is modified to that effect that Krishnamurthy shall pay a sum of Rs.4,000/- p.m. from 21.06.2017 to Kasthuri.

12. The maintenance amount of Rs.4,000/- p.m. should be deposited in the trial Court or credited into the Bank Account of Kasthuri before 10th of every English calendar month. In the event of Krishnamurthy depositing the amount, the same should be disbursed to Kasthuri. Kasthuri will be entitled to take appropriate action under Section 128 Cr.P.C for recovery of arrears and also in the event of Krishnamurthy not paying the monthly maintenance as directed by this Court. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.V
Vellore.

2. -Do- Thro' The Chief Judicial Magistrate,
Vellore

+lcc to Mr.Arun Anbumani, Advocate, SR.No.62325
+lcc to Mr.G.Vinoth Kumar, Advocate, SR.No.62693

Cr1.RC.No.547 of 2019

Kak(14/09/2019)