

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2019

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THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P No.7846 of 2017

1. N.Sindhika
2. Minor Sasipriyan ... Petitioners
Vs.

Elayaraja ... Respondent

Prayer :Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to set aside the order passed in Criminal Revision Petition No.6 of 2016 on the file of the II Additional District Judge, Salem dated 18.11.2016 in modifying the order passed in M.C No.6 of 2013 on the file of the Judicial Magistrate No.I, Mettur dated 30.11.2015.

For Petitioners : Mr. S.Doraisamy

For Respondent : Mr. S.Kumaradevan

ORDER

This petition has been filed challenging the order passed in Criminal Revision Petition No.6 of 2016, wherein the maintenance amount fixed by the learned Judicial Magistrate No.I, Mettur in M.C No.6 of 2013 was modified and reduced by the revisional Court.

2. The 1st petitioner is the wife and the 2nd petitioner is the son of the respondent. The petitioners filed a petition under Section 125 of Cr.P.C. Seeking for maintenance from the respondent.

3. The learned Judicial Magistrate No.I, Mettur, after considering the entire evidence and the materials placed on record, fixed the maintenance amount of Rs.4000/- to the 1st petitioner and Rs.3000/- to the 2nd petitioner, payable every month. Aggrieved by the same, the respondent filed a Criminal Revision Petition No.6 of 2016 before the II Additional District Judge, Salem. The revision Court, on appreciation of the entire materials available on record, was pleased to modify the quantum of maintenance and reduced the monthly maintenance to Rs.2,500/- for the 1st petitioner and Rs.1,500/- for the 2nd petitioner,

payable every month. Aggrieved by the same, the petitioners have filed this Criminal Original Petition before this Court.

4. Mr.S.Duraisamy, the learned Counsel appearing on behalf of the petitioners submitted that the revision Court had exceeded its jurisdiction in reducing the maintenance amount fixed by the trial Court. The learned counsel submitted that the trial Court had fixed the maintenance based on certain materials that were available before the Court and the revisional Court exercising its jurisdiction under Section 397 of Cr.P.C cannot interfere with the findings unless the findings are perverse or it is not based on evidence available on record. Unless this condition is satisfied, a revision Court cannot interfere with the order passed by the trial Court only on account of the fact that it is possible to come to a different conclusion based on the very same materials. The learned counsel submitted that the order passed by the revision Court requires interference of this Court.

5. Per contra, the learned counsel appearing on behalf of the respondent submitted that the revision Court had taken into consideration the fact that the respondent is earning only a sum of Rs.4,000/- every month by working as a Lab Technician. The learned counsel further submitted that the immovable property that was taken into consideration by the trial Court, originally belonged to the mother of the respondent, which was later settled by the respondent to his mother. The learned counsel, therefore, submitted that the revision Court was perfectly right in fixing the monthly maintenance at Rs.2,500/- for the 1st petitioner and Rs.1,500/- for the 2nd petitioner.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. The learned Judicial Magistrate, while fixing the monthly maintenance amount payable by the respondent, had taken into consideration the immovable property that stood in the name of the respondent which was worth a sum of Rs.30,00,000/- and which was subsequently settled in favour of the respondent's mother after receiving the notice from the petitioners claiming for maintenance. By taking note of the same, the trial Court disbelieved the contention put-forth by the respondent that he is earning only a sum of Rs.4,000/- per month by working as a Lab Technician and the trial Court has discussed about the same in detail at para 22 of the order.

8. When the matter was taken up in revision by the respondent, the revision Court had concurred with the finding of the trial Court with regard to the immovable property that stood in the name of the respondent and which was later settled in

favour of the respondent's mother after the receipt of the notice from the Court. However, the revision Court has completely disregarded the findings of the trial Court on this aspect and has only taken note of the contention put-forth by the respondent to the effect that his monthly earning is only a sum of Rs.4,000/-.

9. The revisional Court in exercise of its jurisdiction under Section 397 of Cr.P.C cannot act like a appellate Court and re-appreciate the evidence. The revision Court can exercise its jurisdiction only to correct the miscarriage of justice and it can interfere with the finding of the trial Court only where it finds that the finding is perverse or that it is not based on any evidence or there is absolutely no discussion on the evidence available before the trial Court. The sufficiency of the evidence available before the trial Court or the possibility of coming to a different conclusion based on the same materials, can never be the criteria for a revisional Court to interfere with the findings of a trial Court. This fundamental aspect of the jurisdiction of a revision Court, has been lost sight off by the Court below.

10. In view of the above, the order passed by revision Court requires interference of this Court, in order to secure the ends of justice.

11. Taking into consideration the facts and circumstances of the case, the order passed by the revision Court in Criminal Revision Petition No.6 of 2016, dated 18.11.2016, is hereby set aside and the maintenance payable to the 1st petitioner is fixed at a sum of Rs.3,000/- per month and the maintenance payable to the 2nd petitioner is fixed at a sum of Rs.3,000/- per month. The arrears of maintenance shall be paid from the date of filing of the petition in M.C No.6 of 2013, within a period of six weeks from the date of receipt of copy of this order after adjusting any payments which have already been made by the respondent. The petitioner shall continue to pay the maintenance at the rate fixed by this Court, starting from August 2019 onwards.

12. In the result, this Criminal Original Petition is allowed.
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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The II Additional District Judge, Salem.

2.The Judicial Magistrate No.I, Mettur

+1cc to Mr.S.Doraisamy, Advocate, SR.No.56446

+1cc to Mr.S.Kumara Devan, Advocate, SR.No.56108

Cr1.O.P No.7846 of 2017

Kak(19/08/2019)

Kak(10/09/2019)