

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2019

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.Nos.26905 and 26906 of 2017
in Crl.M.P.Nos.15458 and 15459 of 2017

T.Charles Jeyendran

...Petitioner in both
Crl.O.Ps

-Vs-

Mrs.Lydia Dharmakumari

... Respondent in both
Crl.O.Ps

COMMON PRAYER:- Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the docket order made in M.P.Nos.347 and 348 of 2015 respectively, in M.C.No.71 of 2001, dated 09.11.2017, on the file of the II Additional Family Court, Chennai.

For Petitioner : M/s.R.Dhineshkumar

ORDER

These petitions have been filed against the orders passed by the Court below directing the petitioner to pay the arrears of maintenance on or before 05.12.2017.

2. The petitioner is the husband of the respondent. The respondent filed M.C.No.71 of 2001, against the petitioner claiming for maintenance. The amount of Rs.500/- was fixed as monthly maintenance. In the year 2013, the respondent filed a petition under Section 127 of Cr.P.C claiming for enhancement of maintenance. The II Additional Family Court, Chennai, by an order dated 18.04.2015 enhanced the maintenance amount to Rs.3,000/- per month payable from 29.07.2013. Even though, the petitioner filed a counter in this case, since he did not participate during the enquiry, he was set ex-parte and this order was passed.

3. The respondent filed a petition for execution of the order on the ground that the petitioner did not pay the enhanced maintenance fixed by the Court. In the meantime, the petitioner

also filed a petition seeking for setting aside the ex-parte order and to give him an opportunity to contest the M.P.No.522 of 2013.

4. The Court below allowed both the petitions filed by the respondent and directed the petitioner to pay the arrears of maintenance. Aggrieved by the same, the present Criminal Original Petitions are filed before this Court.

5. The learned counsel for the petitioner submitted that the petitioner is a pastor, who is now aged about 60 years. The learned counsel further submitted that the petitioner does not have any permanent income and he is suffering from ailments and he is not in a position to maintain himself, since he does not have a permanent source of income. The learned counsel therefore submitted that the Court below ought to have considered the set aside petition filed by the petitioner before allowing the execution petition filed by the respondent.

6. This Court has carefully considered the submissions made by the learned counsel for the petitioner and also the materials available on record.

7. Even though it is brought to the notice of this Court that the petitioner has filed a petition to set aside the ex-parte order, it has not even been numbered. That apart the petitioner has not paid any maintenance to the respondent from the year 2005 onwards. The only entry that is available in the entire case papers is one payment that was made on 09.11.2017 of a sum of Rs.4,500/-. Therefore, the petitioner has successfully dragged on the proceedings and has failed to pay any maintenance to the respondent.

8. The Court below, while enhancing the maintenance amount has taken into consideration the counter filed by the petitioner and has thought it fit to enhance the amount of maintenance from Rs.500/- from Rs.3,000/- per month. This Court does not find any illegality or infirmity in the order passed by the Court below enhancing the maintenance amount and also allowing the execution petition filed by the respondent.

9. If the petitioner finds that he is not in a position to pay enhanced maintenance amount due to his physical ailments and non-availability of regular income, he is always entitled to file an application under Section 127 of Cr.P.C, seeking for modification of the maintenance amount. It is now settled that where once an order of maintenance is passed under Section 125 of Cr.P.C, that amount can be increased or decreased by change of circumstances of the person receiving or the person paying the amount. Therefore, even the petitioner is entitled to go

before the Court seeking for modification of the maintenance amount fixed by the Court below. Till the maintenance amount is modified or reduced, the petitioner is duty bound to pay the enhanced maintenance amount fixed by the Court below.

10. In the result, these Criminal Original Petitions are dismissed and liberty is given to the petitioner to work out his remedy under Section 127 of Cr.P.C, seeking for modification/reduction of the maintenance amount. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

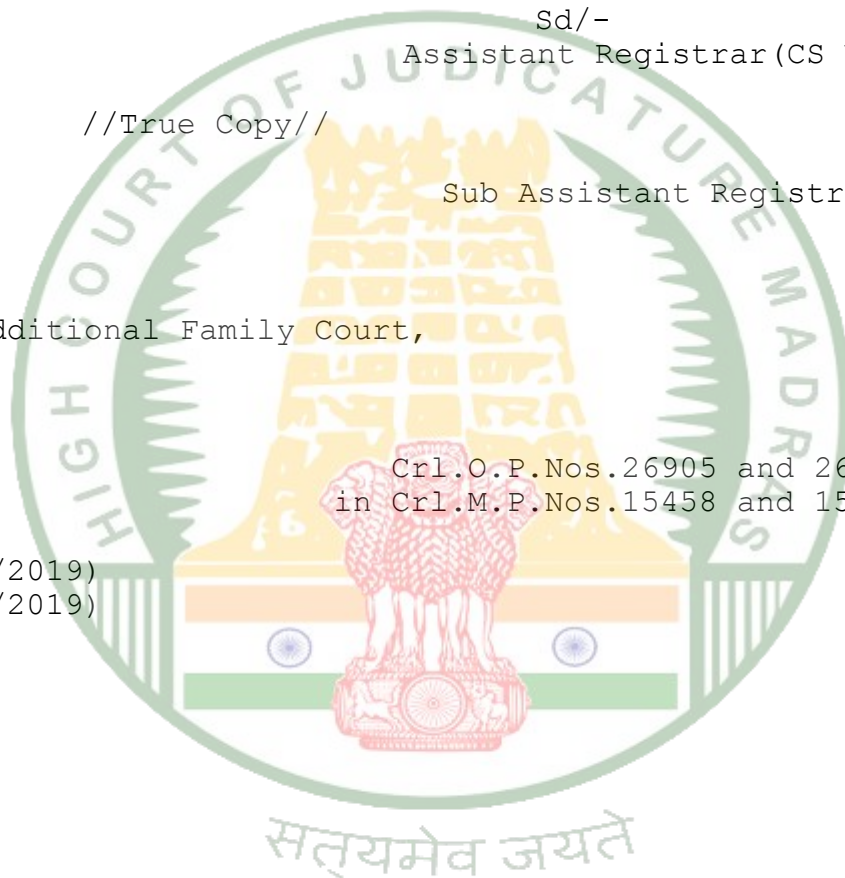
To

The II Additional Family Court,
Chennai.

Crl.O.P.Nos.26905 and 26906 of 2017
in Crl.M.P.Nos.15458 and 15459 of 2017

Kak(27/07/2019)

Kak(04/09/2019)



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