

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1361 of 2018 and
Crl.M.P.No.15849 of 2018

H.Bakrudeen

...Petitioner

-Vs-

1. Reshma

2. Minor. Syed Muhammed Azam

represented by his mother 1st respondent

...Respondent

This Criminal Revision Petition is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the order made in M.C.NO.05 of 2015 dated 11.08.2017 by the learned Chief Judicial Magistrate, Namakkal and call for the records and quash the same.

For Petitioner : Mr.S.Madhusudanan

For Respondent : Mr.D.Shivakumar

O R D E R

This criminal revision has been filed against the order of maintenance granted by the Court below by order dated 11.08.2017 to the respondents.

2 The petitioner is husband, 1st respondent is wife and 2nd respondent is their minor child. The first respondent has filed a petition in M.C.No.5 of 2015 under Section 125 of Cr.P.C, seeking maintenance. The learned Judge, after advertng to the materials placed on record and after hearing both the parties, by order dated 11.08.2017, had awarded Rs.3,000/- to the first respondent and Rs.2,000/- to the second respondent. Aggrieved against the same, the husband is before this Court.

3 The learned counsel appearing for the petitioner would submit that 1st respondent is employed and earning Rs.6000/- p.m., which would sufficient to maintain herself. Eventhough, the petitioner has obtained a proof of income of the first respondent through Right to Information Act, the learned Magistrate failed to mark the same and awarded maintenance to the first respondent, which is against the law and is liable to

be set aside.

4 According to the learned counsel for the respondents, the petitioner has not taken any steps to prove the document which was obtained through RTI. The learned Magistrate, after taking into consideration all the materials, had rightly awarded maintenance, which does not call for any interference.

5 Heard the learned counsel appearing on either side and perused the materials available on record.

6 Admittedly the petitioner is working in a reputed Company. Even though the petitioner is disputing the salary, he has not produced any salary certificate and thereby failed to prove his actual income. Petition under Section 125 of Cr.P.C. can be filed by the wife, only if the husband having sufficient means neglected or refuses to maintain his wife, who is unable to maintain herself. In the present case, however, the petitioner/husband has taken steps to prove the employment of the first respondent/wife and produced a proof for the same, which was obtained through RTI. Under these circumstances, this Court is inclined to modify the maintenance awarded by the Court below. Accordingly, maintenance to the wife is concerned, the award of Rs.3000/- is hereby set aside and remitted back the same to the Court below to consider the aspect of employment of the first respondent and decide the matter afresh and as far as maintenance of Rs.2000/- to the second respondent is concerned, this Court is of the view that the petitioner/husband is bound to maintain the minor child, who is unable to maintain itself. Hence considering the cost of living prevailing as on date, the award of Rs.2000/- to the second respondent is hereby enhanced to Rs.5000/-. The petitioner is directed to pay arrears of maintenance as far as the second respondent is concerned within a period of four weeks from the date of receipt of a copy of this order. The learned Magistrate is directed to dispose of the case as far as the first respondent/wife is concerned, after considering the factum of employment of the first respondent within a period of three months from the date of receipt of a copy of this order.

7 With the above direction and modification, this criminal revision is disposed of. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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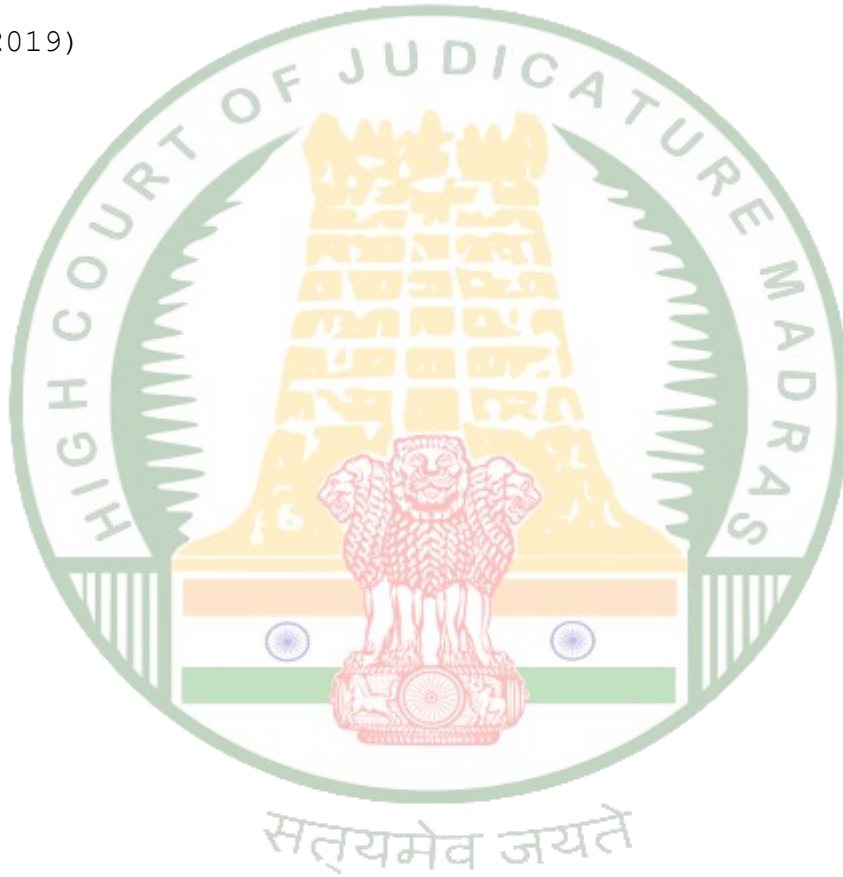
1. The Chief Judicial Magistrate, Namakkal.

+1 CC to Mr.D.Shivakumaran, advocate sr 13836.

+1 CC to Mrs.Madhusudanan, Advocate sr 13265.

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RK (CO)
SP (04/03/2019)



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