

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:31.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Crl.R.C.No.1308 of 2018
and
C.M.P.Nos.15447 and 15449 of 2018

S.Femy Parimala Petitioner

vs.

1.Glover.Surendaran
2.Wilky Glover
3.Gomathi
4.Padma

..... Respondents

Petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the judgement dated 31.08.2018, passed in C.A.No.330 of 2018, by the Principal Sessions Judge, Chennai, confirming the order dated 20.06.2017, passed in C.M.P.No.990 of 2016 in D.V.C.No.106 of 2016, by the Additional Mahila Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.C.Rajan

For Respondents : No appearance for R1, R2 and R4

O R D E R

The present revision case has been filed against the judgement dated 31.08.2018, passed by the appellate Court in C.A.No.330 of 2018, confirming the order passed by the trial Court, dated 20.06.2017, in C.M.P.No.990 of 2016, directing the first respondent herein/husband to pay a sum of Rs.10,000/- to the petitioner/wife as monthly maintenance from the date of the order. Although the petitioner has sought monthly payment of Rs.50,000/- the trial Court has ordered only a sum of Rs.10,000/- towards interim monthly maintenance from the date of the order.

2.When the matter is taken up for hearing, the learned counsel appearing for the revision petitioner/wife submitted that he is confining his argument only in regard to the grant of monthly maintenance of Rs.10,000/- from the date of the order and not from the date of application i.e. from 21.09.2015. He would request this Court that the revision petition may be dealt

with only on that aspect alone and not on other aspects and the trial Court may be directed to deal with the other aspects as well when the main case is disposed of.

3.The learned counsel for the petitioner would further submit that he is confining the relief only as against the first respondent, who has been served and on his behalf, counsel has also entered appearance. However, when the matter is taken up for hearing, no one appeared for the first respondent and there is no representation on behalf of him.

4.The learned counsel would draw the attention of this Court to the decision of the Hon'ble Supreme Court of India in Shail Kumari Devi and another v. Krishnan Bhagwan Pathak @ Kishun B Pathak [(2008) 9 SCC 632)], in which, he would draw the attention of this Court to Paragraph No.46, which is extracted hereunder.

"46. Again, maintenance is a right which accrues to a wife against her husband the minute the former gets married to the latter. It is not only a moral obligation but is also a legal duty cast upon the husband to maintain his wife. Hence, whenever a wife does not stay with her husband and claims maintenance, the only question which the Court is called upon to consider is whether she was justified to live separately from her husband and still claim maintenance from him? If the reply is in the affirmative, she is entitled to claim maintenance. It is, therefore, open to the Magistrate to award maintenance from the date of application and there is nothing which requires recording of 'special reasons' though he must record reasons as envisaged by sub- section (6) of Section 354 of the Code in support of the order passed by him."

5.According to the learned counsel, the normal rule is that if maintenance is ordered it should take effect from the date of application and if it is to take effect from the date of the order, a special reasoning is to be recorded, as per the provisions of the Criminal Procedure Code. He would draw the attention of this Court to the order passed by the trial Court, in which, no reasons have been given for ordering interim maintenance from the date of the order and not from the date of the application. In regard to the quantum of maintenance claimed by the petitioner herein, the learned counsel would submit that the same may be left to the adjudication of the trial Court when the matter is decided finally by the trial Court.

6.This Court is in agreement with the submission made on behalf of the petitioner that it is incumbent upon the trial Court to record special reasons for not granting maintenance from the date of application, but granting such maintenance only from the date of the order. In this case, no reasons at all had been spelt out in the order passed by the trial Court and unfortunately, the lower appellate Court, which dealt with the same issue, has over looked the said aspect and confirmed the order passed by the trial Court. When maintenance is claimed by any aggrieved party, the direction for grant of maintenance ought to be ordered from the date of the application as a norm and from the date of order which is only an exception to the norm. When such exception is being applied, it is imperative that reasons must be accompanied with such direction. In this case, the trial Court has not given any reasons in support of its restriction of the benefit of maintenance only from the date of the order.

7.For the above said reasons, the order of the trial Court, as confirmed by the appellate Court in C.A.No.330 of 2018, is hereby set aside only in respect of the portion restricting the grant of maintenance from the date of the order and not from the date of the application. The order is therefore modified to the effect that the petitioner herein is entitled to interim maintenance of Rs.10,000/- from the date of the application with arrears etc. The first respondent is also directed to make good the arrears of maintenance calculating from the date of application i.e. from 21.09.2015 within a period of four weeks from the date of receipt of a copy of this order and continue to pay the monthly maintenance of Rs.10,000/- to the petitioner on or before 5th of every English calendar month. The other reliefs as prayed for by the petitioner are left open to the trial Court to adjudicate upon the same when the matter is taken up for final disposal.

In the result, the criminal revision case is allowed to the extent as indicated above. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Msk

To

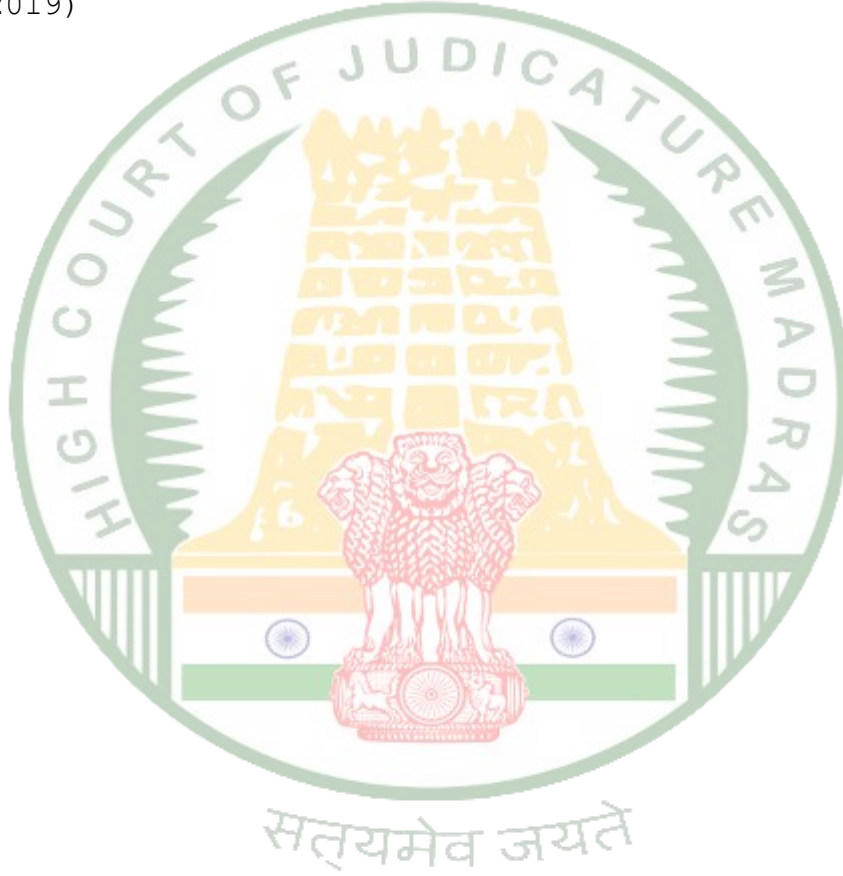
1.The Principal Sessions Judge, Chennai

2.The Additional Mahila Metropolitan Magistrate,
Egmore, Chennai.

+3 Ccs to Mr.C.Rajan, Advocate sr 7917.

Cr1.R.C.No.1308 of 2018

EV(CO)
SP(13/02/2019)



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