



Crl.O.P(MD).No.331 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 25.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.331 of 2019

R.Ponkalaban

...Petitioner

Vs

1.M.Sindhuja

2.Minor Viswajith Rabi

Minor 2nd Respondent rep. by

her mother guardian -1st Respondent herein

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records and to set aside the order dated 25.03.2019 passed by the learned Family Court, Kanyakumari at Nagercoil in Crl.M.P.No.23 of 2019 in M.C.No.46 of 2015.

For Petitioner	: Mr.R.Ponkalaban, Party in person
For Respondents	: Mr.N.Dilip Kumar

ORDER

This petition is filed to set aside the order passed in Crl.M.P.No.23 of 2019 in M.C.No.46 of 2015 dated 25.03.2019, on the file of the Family Court, Kanyakumari at Nagercoil.

2.The case of the petitioner is that the first respondent is the legally



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wedded wife and the second respondent is son of the petitioner. Due to misunderstanding, the respondents have preferred a petition in M.C.No.46 of 2015 before the Chief Judicial Magistrate, Nagercoil for claiming maintenance. Thereafter, the matter was referred to Lok Adalath and the matter was compromised and both the parties agreed to settle the matter and as per the settlement, the petitioner has to pay a sum of Rs.7,500/- per month directly to the respondents bank account. Thereafter, the petitioner is regularly paying the monthly amount. While so, the respondents have filed a petition in Crl.M.P.No.23 of 2019 in M.C.No.46 of 2015 under Section 128 of Cr.P.C., for enhancement of maintenance. The trial Court has allowed the petition through order dated 25.03.2019 and enhanced the maintenance amount from Rs.7,500/- to Rs.12,000/- per month. Aggrieved over the same, the present revision petition has been filed.

3.The grounds raised by the petitioner in this petition is that the award of Lok Adalath become final and no appeal or revision lies on the order passed before the Lok Adalath. There are no change of circumstances to enhance the award amount, which was already passed before the Lok Adalath. The first respondent is working in a private Company and earning a sum of Rs.20,000/- per month and also she has movable and immovable properties. Therefore, the order passed by the trial Court by enhancing the maintenance amount from



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Rs.7,500/- to Rs.12,000/- is liable to be set aside.

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4.No counter was filed by the respondents.

5.The petitioner appearing in person before this Court and he has argued that the petitioner is working in a private Company and he has to take care of his ailed mother and also he has one child through his second wife. The first respondent having sufficient means to maintain her and she is also working in private company and earning Rs.20,000/- per month. As agreed by both parties, the matter has been settled before the Lok Adalath and both the parties also agreed for maintenance of Rs.7,500/- and now without any valid reasons, the trial Court enhanced the amount from Rs.7,500/- to Rs.12,000/-. Therefore, the order passed by the trial Court in Crl.M.P.No.23 of 2019 in M.C.No.46 of 2015 is liable to be set aside.

6.To support his contention, he relied on the following judgments:-

(I) ***Deb Narayan Halder v. Anushree Halder*** in ***AIR 2003 Supreme Court 3174***.

(ii) ***Jyothi Alias Gayathir v. Rohit Sharma Alias Santosh Sharma*** reported in ***AIR Online 2022 Del 1750***.

(iii) ***Archita Seth v. Sunil Seth*** reported in ***AIR online 2019 Del 50***.



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(iv) *Jyothi Shrivastava v. Vivek Shrivasthava* reported in *AIR online*

2019 MP 548.

(v) *Mamta Jaiswal v. Rajesh Jaiswal* reported in *II(2000) DMC 170.*

(vi) *Padmja Sharma v. Ratan Lal Sharma* reported in *AIR 2000*

Supreme Court 1398.

(vii) *Sangitabeen Rasiklal Jaiswal v. Sanjavykumar Ratilal Jaiswal*

reported in *(2000) 3 GLR 297.*

(viii) *Teena v. Nithesh* in *Criminal Revision No.158 of 2016.*

7.The learned counsel appearing for the respondents has contended that the matter was settled between the parties through Lok Adalath and the petitioner is paying Rs.7,500/- per month. The award was passed in the year 09.04.2016. But considering the cost of living, the aforesaid amount is not sufficient to meet out the expenses of the respondents and thereby, they filed application before the trial Court and the trial Court after taking into consideration all the aspects passed the order of enhancement of maintenance amount from Rs.7,500/- to Rs.12,000/-, which is reasonable one. As far as the award passed by the Lok Adalath is concerned, the respondents have not challenged the aforesaid order passed by the Lok Adalath but the petition filed is only for enhancement of maintenance amount under Section 128 of Cr.P.C.

Therefore, this petition is liable to be dismissed.



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WEB COPY 8.This Court heard both sides and perused the materials available on records.

9.The main contention of the petitioner is that already the matter was settled between the parties through Lok Adalath and thereby, the maintenance amount was fixed as Rs.7,500/- by order dated 09.04.2016. Now without any change of circumstances, the award amount has been modified by the trial Court.

10.As far as the award passed by the Lok Adalath is concerned, there is no doubt the appeal would not lie as against the order passed by the Lok Adalath, since both the parties agreed for the settlement. In the case on hand though the matter has been settled between the parties with regard quantum of maintenance amount by an order dated 09.04.2016, the said order has not been challenged by the respondent before the trial Court. The respondents filed the petition to enhance the maintenance amount and thereby, the contention of the petitioner is that the award granted by the Lok Adalath is final and this enhancement of maintenance petition is not maintainable is not acceptable.

11.Another contention raised by the petitioner is that he is maintaining



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his second wife and the child born through his second wife and his ailed mother. Therefore, the order passed by the trial Court for enhancing from Rs. 7,500/- to Rs.12,000/- is too high.

12. Admittedly the award passed by the trial Court is on 09.04.2016 but the petition under Section 127 of Cr.P.C., was filed in the year 2019. Therefore, after three years from the date of award of Lok Adalath, this petition was filed. The amount of Rs.7,500/- for two persons is not sufficient considering the cost of living and the tender age of the second respondent. Though the petitioner has argued that the first respondent is having sufficient means to maintain herself and she has movable and immovable properties, the minor child is under the custody of the first respondent and thereby, the enhancement of the maintenance amount of Rs.12,000/- is reasonable.

13. The learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case in (i) **Deb Narayan Halder v. Anushree Halder** in **AIR 2003 Supreme Court 3174**, wherein it is held as follows:

“We therefore hold that the High Court was not justified in setting aside the findings recorded by the learned Judicial Magistrate..... Why this happened, it is difficult to fathom, but the



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evidence on record does not convince us that the respondent was subjected to torture and harassment by the appellant and certainly not for the reasons alleged by her..... In the result this appeal is allowed and the impugned judgment and order of the High Court is set aside.”

(ii) *Jyothi Alias Gayathir v. Rohit Sharma Alias Santosh Sharma*

reported in ***AIR Online 2022 Del 1750***, wherein the Delhi High Court held as follows:

“Amount of maintenance once fixed under Section 125 subject to variation as per altered circumstances – circumstances alleged by wife already existed at time of passing original maintenance judgment – nothing on record to prove that there has been change in circumstances that would warrant enhancement in maintenance – Also, no documents to show exact income of husband-thus wife not entitled to enhancement of maintenance.”

(iii) *Archita Seth v. Sunil Seth* reported in ***AIR online 2019 Del 50***,

wherein the Delhi High Court held as follows:

“Goma Devi has not been able to establish that she had been neglected by her husband. As a matter of fact she is living with her parents of her own accord. She is, therefore, not entitled for maintenance allowance for herself. However, she is entitled to



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maintenance allowance for her two kids who are living with her. ...

It is not fault of the children when they are living with their mother. The father is bound to provide maintenance to them..... The order of the Addl. Sessions Judge granting maintenance to Goma Devi is set aside.”

(iv) *Jyothi Shrivastava v. Vivek Shrivasthava* reported in ***AIR online***

2019 MP 548, wherein it is held as follows:-

“Maintenance-wife's refusal to live with husband-sufficient cause-wife alleging that her husband was prone to exhibiting extreme behaviour, sometimes being caring towards her and at other times exhibiting undue outrage resulting in extreme brutality.... Allegation of violence has not been substantiated by any cogent evidence -Cruelty of either kind I.e. mental or physical has not been proved- Failure of wife to establish sufficient ground to leave her husband-wife is not entitled to maintenance.”

(v) *Mamta Jaiswal v. Rajesh Jaiswal* reported in ***II(2000) DMC 170***,

wherein it is held as follows:-

“In fact, well qualified spouses desirous of remaining idle, not making efforts for the purpose of finding out a source of livelihood, have to be discouraged, if the society wants to progress.”



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(vi)***Padmja Sharma v. Ratan Lal Sharma*** reported in ***AIR 2000***

Supreme Court 1398, wherein the Hon'ble Supreme Court held as follows:-

“In the present case both the parents are employed. If we refer to the first application filed under Section 26 of the Act by the wife she mentioned that she is getting a salary of Rs.3,100/- per month and husband is getting a salary of Rs.5,850/- per month. She is therefore, also obliged to contribute in the maintenance of the children. Salaries of both the parents have since increased with the course of time. ...The appeal is thus partly allowed.”

(vii)***Sangitabeen Rasiklal Jaiswal v. Sanjavykumar Ratilal Jaiswal***

reported in ***(2000) 3 GLR 297***, wherein it is held as follows:-

“As a result of the aforesaid discussion, this revision application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. In this Court also, the petitioner was entitled for free legal aid but she could not get this facility either because of unawareness of her right or that her advocate has not made known her of this right, the innocent husband cannot be saddled with the costs of the revision application.”

(viii)***Teena v. Nithesh*** in ***Criminal Revision No.158 of 2016***, wherein

the Madhya Pradesh High Court held as follows:-



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“So in the considered opinion of this Court learned trial Court did not commit any mistake in arriving at the conclusion that applicant is living separately from the respondent without any sufficient reason and that she is not entitled to get maintenance from the applicant. Hence, this revision has no force and is hereby dismissed.”

14.On perusal of the aforesaid judgments, it is clear that it will not applicable to the present facts of the case. In the present case, already settlement was arrived between the parties and this petition is only for enhancement of the award amount.

15.The trial Court also in its order elaborately discussed that though both the parties settled between the Lok Adalath regarding quantum, as per Section 127 of Cr.P.C., the petitioner has the right to file the enhancement of maintenance petition and further the trial Court observed that at the time of settlement between the Lok Adalath, the second respondent was aged about 2 years and now he is four years old and the petitioner has to admit the second respondent in school and considering the cost of living and considering the other expenses, the trial Court has correctly enhanced maintenance amount and thereby, there is no any infirmity in the order passed by the trial Court.



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Therefore, this petition has no merits and deserves to be dismissed.

Accordingly, this Criminal Original Petition is dismissed.

25.08.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
Mrn

To

1.The Judge, Family Court, Kanyakumari.



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P. DHANABAL,J.

Mrn

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