



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATE : 15.10.2019

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

CRL. R.C. (MD) NO. 382 OF 2019

AND

CRL. M.P. (MD) NO. 5681 OF 2019

S.Sivakumar

.. Petitioner

- Vs -

1. Manikandeswari

2. Minor Porkodi

(R-2 rep. by mother & natural
guardian - R-1)

.. Respondents

Criminal Revision Case filed u/s 397 r/w 401 of the Code of Criminal Procedure, against the order dated 05.10.2018, passed by the learned Judicial Magistrate No.2, Kovilpatti, in Cr. M.P. No.5710 of 2015 in M.C. No.8 of 2004.

For Petitioner : Mr. B.Rajesh Saravanan

For Respondents : Mr. S.Ramasamy

ORDER

The present revision has been filed against the order in and by which the maintenance sought for by the respondents herein to the tune of Rs.500/- per month to each of the respondent has been allowed.

2. It is the case of the petitioner/husband that the respondents, suppressing the permanent maintenance received from the husband and obtained divorce decree, has filed the present petition seeking enhancement of maintenance, which is not sustainable in law. It is the case of the petitioner that initially, the respondents herein filed M.C. No.5/2002 in which the petitioner was directed to pay maintenance in a sum of Rs.500/- per month. Thereafter, the respondents herein filed M.C. No.8/2004 seeking enhancement of maintenance in a sum of Rs.1000/-. Pending



the same, a settlement was entered into, whereby, permanent maintenance in a sum of Rs.90,000/- has been paid to the respondents herein as early as in the year 2007-2008 and consequent upon the same decree for divorce has been granted. However, suppressing the said fact relating to receipt of permanent maintenance in one lumpsum, the present petition has been filed and the trial court, without considering the fact of payment of permanent maintenance, has enhanced the monthly maintenance to Rs.1,000/- to the respondents herein and assailing the said order, the present petition has been filed.

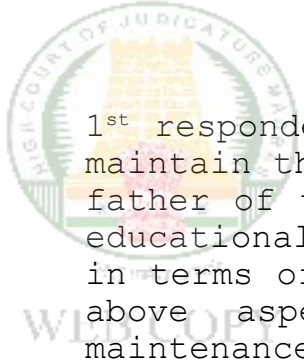
3. Learned counsel appearing for the petitioner herein reiterated the submissions as advanced before the Court below and drew the attention of this Court to the permanent maintenance paid to the respondents herein and submitted that the respondents herein having received permanent maintenance cannot once again come before the Court and claim enhanced maintenance and, therefore, the order passed by the court below deserves to be set aside.

4. Per contra, learned counsel appearing for the respondents herein submitted that the enhancement claimed by the respondents is only a paltry sum, which is Rs.500/- over and above the maintenance received by the respondents. It is further submitted by the learned counsel appearing for the respondents that the 2nd respondent, the minor daughter, is studying and to offset the expenditure towards her education, enhancement is required and the petitioner, as the father, is duty bound to pay her educational expenses and the court below, taking all the above factors into consideration has enhanced the maintenance and, therefore, no interference is warranted with the well considered passed by the court below.

5. This court heard the submissions of the learned counsel appearing on either side and also perused the materials available on record as also the impugned order passed by the court below.

6. The marriage between the petitioner and the 1st respondent is not in dispute. So also the birth of the 2nd petitioner out of the said wedlock is also not in dispute. The only ground of attack is that the respondents herein, having received permanent maintenance in a sum of Rs.90,000/- now cannot come back once again and claim enhancement of maintenance.

7. It is true that a settlement has been arrived at based on which a lumpsum amount towards maintenance has been paid to the respondents. However, the duty of the Court is to see that whether the lumpsum amount paid towards maintenance is just and equitable. In the case on hand, it is not disputed that a sum of Rs.90,000/- has been paid to the respondents as lumpsum maintenance in the year 2007-2008. It is trite that the petitioner, as the husband of the



1st respondent and the father of the 2nd respondent is duty bound to maintain them. Equally so, it is the duty of the petitioner, as the father of the 2nd respondent to see to it that the 2nd respondent is educationally empowered. Further, the future of the 2nd respondent in terms of marriage also needs to be looked into. Keeping all the above aspects in mind, if the lumpsum amount paid towards maintenance is looked at, it can safely be concluded that the said sum of Rs.90,000/-, paid towards lumpsum maintenance could in no way be termed as a just and equitable maintenance.

8. It is not that once lumpsum maintenance has been paid, enhancement cannot be sought for. It all depends on the facts and circumstances of each case and also the amount of lumpsum maintenance paid. A perusal of the order passed by the court below reveals that the court below has relied upon a decision of the Himachal Pradesh High Court, which has held that compromise in question being opposed to public policy, the petitioner therein was not debarred from enforcing the order of maintenance to claim enhancement in maintenance amount.

9. It is also borne out by record that the respondents have not disputed the receipt of lumpsum maintenance. However, on the basis of the current economic scenario, enhancement of maintenance is sought, which cannot be said to be unreasonable or unjust. Further, it is to be pointed out that the enhancement sought for is only an amount of Rs.500/- over and above the amount what is paid towards maintenance. In all, the total maintenance amount works out to Rs.1000/- only for both the respondents. Further, the petitioner is also gainfully employed in the postal department, an arm of the Central Government and is receiving a good pay package. That being the case, it cannot be said that the enhancement ordered towards maintenance is unjust and unreasonable.

10. The trial court, on an overall consideration of the entire issue and applying the law on maintenance in its correct perspective, has awarded just and reasonable maintenance and, therefore, this Court is of the considered view that no interference is called for with the well considered finding recorded by the court below.

11. For the reasons aforesaid, this petition, being devoid of merits is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

Sub Assistant Registrar(CS)



To
The Judicial Magistrate No.2
Kovilpatti.

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+1CC TO MR.S.RAMASAMY, Advocate Sr. No.92034

+1CC TO MR.B.RAJESH SARAIVANAN, Advocate Sr. No. 92235

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