



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD) .Nos.16275 & 16276 of 2017

WEB COPY

Crl.O.P. (MD) No.16275 of 2017:

K.Iyyanar	...	Petitioner/Petitioner
	Vs.	
Karthika	...	Respondent/ Respondent

Crl.O.P. (MD) No.16276 of 2017:

K.Iyyanar	...	Petitioner/ Petitioner/ Petitioner/ Respondent/ Respondent
	Vs.	
Muniammal	...	Respondent / Respondent Respondent/ Petitioner/ Petitioner

COMMON PRAYER: Criminal Original Petitions are filed under Section 482 of Cr.P.C. to call for the records relating to the order passed by the Court of IV Additional Sessions Judge, Tirunelveli in Crl.R.C.Nos.7 & 8 of 2017 respectively dated 18.08.2017 and the order of the learned Judicial Magistrate, Sengottai dated 09.01.2017 passed in Crl.M.P.Nos.10491 & 10492 of 2014 respectively, insofar as holding the cancellation to take effect only from 09.01.2017 and set aside the same and cancel the maintenance from the inception as prayer for.

In both the cases:

For Petitioner	:	Mr.N.Dilip Kumar
For Respondent	:	Mr.N.Ananthapadmanaban

C O M M O N O R D E R

Since the issue involved in both the Criminal Original Petitions are one and the same, both the cases are disposed of by this common order.

2. These petitions have been filed challenging the order passed by the IV Additional Sessions Judge, Tirunelveli dismissing the criminal revision filed by the petitioner and confirming the order passed by the learned Judicial Magistrate, Sengottai made in Crl.M.P.Nos.10491 & 10492 of 2014 respectively, dated 09.01.2017.



3. The brief facts of the case is that the petitioner got married to the respondent in the year 1984 and there is a daughter born out of the said wed lock. Right from the beginning, there was a very serious misunderstanding and series of proceedings were initiated.

Ultimately, the marriage itself came to be dissolved by the judgment passed by this Court in C.M.S.A.Nos.18 & 19 of 2002 dated 3.08.2012.

4. In the mean time, the respondent had initiated proceedings under Section 125 of the Cr.P.C. and had sought for maintenance. The maintenance was ordered. Thereafter, the respondent filed a petition for enhancement of the maintenance from Rs.1,000/- to Rs.5,000/- per month and the same was allowed. The enhancement was challenged by the petitioner before this Court in Cr.RC No.994 of 2011 and this Court by an order dated 25.06.2012 directed that the maintenance need not be paid after 31.05.2012. This order became the subject matter of challenge before the Hon'ble Supreme Court and the Hon'ble Supreme Court by an order dated 04.08.2014, partly allowed the appeal and gave liberty to the petitioner to seek for modification/variation of the earlier order before the appropriate forum. In the mean time, the daughter completed her studies and she also got married.

5. The petitioner, thereafter filed a petition before the learned Judicial Magistrate, Sengottai to cancel the order of maintenance. The respondent filed a counter in the said petition. The Chief Judicial Magistrate, by order dated 09.01.2017, allowed the petition and ordered for cancellation of the maintenance amount payable to the respondent. However this order was given effect only from 09.01.2017.

6. Aggrieved by the same, the petitioner filed Crl.R.C. No.8 of 2017, before the Court below on the ground that the cancellation of the maintenance should have been ordered from 02.05.2007 onwards since the respondent was working as a 'Helper' in an Anganvadi and she was able to maintain herself.

7. The Court below after considering the facts and circumstances of the case, dismissed the revision on the ground that learned Judicial Magistrate did not have the power to cancel the maintenance with retrospective effect and the revision Court did not find any illegality in the order and accordingly, the order passed passed by the learned Judicial Magistrate was confirmed.

8. Heard learned counsel for the petitioner and the learned counsel appearing for the respondent.

<https://hcservices.courts.gov.in/hcservices/>
9. On going into consideration, the chequered history and the facts and circumstances of the case, and also of the fact that the respondent is in a position to maintain herself since she is



regularly working in an Anganvadi, this Court is of the considered view that the cancellation of the enhanced maintenance can take effect from the date of filing of the petition by the petitioner. The petitioner had filed the petition on 26.09.2014. The learned Magistrate should have taken that into consideration and cancelled the enhanced maintenance atleast from the date of the filing of the petition.

10. In view of the above discussion, the order passed by the learned Judicial Magistrate, Sengottai, as confirmed by the learned IV Additional Sessions Judge, Tirunelveli, is modified to the extent that the cancellation of the enhanced maintenance will take effect from 26.09.2014. Accordingly, these Criminal Original Petitions are disposed of.

Sd/-

Assistant Registrar (P&A))

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Sub Assistant Registrar(CS)

To

- 1) The Court of IV Additional Sessions Judge,
Tirunelveli.
- 2) The Judicial Magistrate,
Sengottai
- 3) The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.N.DILIP KUMAR, Advocate (SR-88257[F] dated 20/09/2019)

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Common Order made in
Crl.O.P. (MD) .Nos.16275 &
16276 of 2017
20.09.2019