



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.11.2019

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P. (MD) .No.17295 of 2017

and

CRL.M.P. (MD) .No.11343 of 2017

Pitchappa : Petitioner/Petitioner/
Respondent/Respondent
Vs.

1. Vijayalakshmi
2. Minor Manimala Suganya
(2nd respondent is represented through her mother
and natural guardian / first respondent herein)
: Respondents/Petitioners/
Respondents/Respondents

PRAYER: Petition is filed under Section 482 of Criminal Procedure Code to set aside the order in Crl. Revision No.16 of 2014, on the file of the Ist Additional District and Sessions Judge, Tirunelveli in Crl.M.P.No.2237 of 2011 in M.C.No.9 of 2007, on the file of the learned Judicial Magistrate, Cheranmahadevi, dated 19.08.2015 and remand back to Trial Court to conduct fresh enquiry in the interest of justice in M.C.No.9 of 2007 on the file of the Judicial Magistrate, Cheranmahadevi, dated 01.02.2008.

For Petitioner : Mr.K.P.Narayanakumar

For Respondents : Mr.N.Sankar Ganesh

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Ist Additional District and Sessions Judge, Tirunelveli, made in Criminal Revision Petition No.16 of 2014, confirming the order passed by the learned Judicial Magistrate, Cheranmahadevi, made in Crl.M.P.No.2237 of 2011 in M.C.No.9 of 2007.

2. The first respondent filed a petition under Section 125 of the Code of Criminal Procedure seeking for maintenance. Initially, an order was passed in M.C.No.9 of 2007, fixing the monthly maintenance at a sum of Rs.1,500/- for the first respondent and Rs.2,000/- for the second respondent payable from the date of petition i.e. from 31.05.2007.



3. This order has become final. Subsequently, the application came to be filed in Crl.M.P.No.2237 of 2011, seeking for enhancement of maintenance. The learned Judicial Magistrate by an order dated 12.04.2013, enhanced the maintenance by fixing the maintenance amount of Rs.3,000/- for the first respondent and Rs.3,500/- for the second respondent. This order became a subject matter of challenge before the Ist Additional District and Sessions Judge, Tirunelveli and the Revisional Court after considering the facts and circumstances of the case, was pleased to dismiss the Criminal Revision and confirmed the order passed by the learned Judicial Magistrate, Cheranmahadevi.

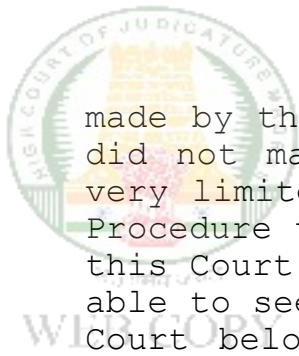
4. The learned counsel appearing for the petitioner submitted that insofar as the minor daughter is concerned, she is now aged about 29 years and she is working as a Teacher. The learned counsel further submitted that the petitioner is also willing to incur the marriage expenses of the second respondent. The learned counsel fairly submitted that the petitioner has absolutely no objection in paying the maintenance amount to the daughter and even incurring her marriage expenses. Therefore, the learned counsel confined his arguments only insofar the first respondent wife.

5. The learned counsel submitted that the petitioner questioned the fidelity of the first respondent and that is the reason why the matrimonial life itself became a big turmoil and they are living apart for more than 17 years. The learned counsel submitted that the Court below has not taken into consideration the financial wherewithal of the petitioner and the maintenance amount has been enhanced without any basis.

6. Per contra, the learned counsel appearing for the respondents submitted that this Court exercising its jurisdiction under Section 482 of the Code of Criminal Procedure, cannot reconsider the entire facts of the case and this petition cannot be treated as a second revision, since it is barred under Section 397 (2) of the Code of Criminal Procedure. The learned counsel further submitted that even the maintenance amount that has been fixed has not been properly paid and even the learned Judicial Magistrate has given a certificate dated 03.11.2018, to the effect that there is an amount of Rs.2,76,250/- which is due and payable by the petitioner. The learned counsel submitted that as on date, the total amount due works out to the sum of Rs.3,11,250/-.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. This Court attempted to call the parties and see if a one time settlement can be made in this case. However, the offer



made by the petitioner and the expectations of the first respondent did not match and therefore, the talks failed. This Court has a very limited jurisdiction under Section 482 of the Code of Criminal Procedure to interfere with the orders passed by the Court below and this Court cannot reappraise the entire facts, unless, this Court is able to see perversity in the order passed by the Court below. The Court below has based its findings on certain materials and this Court does not find the maintenance amount fixed to be exorbitant. Therefore, this Court is not inclined to interfere with the order passed by the Court below.

9. If at all the petitioner is not in a position to pay the maintenance and the second respondent, who is now aged about 29 years is able to maintain herself through employment, it is always open to the petitioner to file a petition under Section 127 of the Code of Criminal Procedure and seek for the alteration / cancellation / variation of the maintenance that has been fixed by the Court below.

10. In the result, the order passed by the Court below in in Crl. Revision No.16 of 2014 is sustained and the Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Ist Additional District and Sessions Judge,
Tirunelveli.

2. The Judicial Magistrate, Cheranmahadevi.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.P.NARAYANA KUMAR, Advocate (SR-95989[F] dated
05/11/2019)

Order made in
CRL.O.P. (MD) .No.17295 of 2017

Dated: 01.11.2019