

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2020

CORAM

THE HON'BLE MR. JUSTICE P. RAJAMANICKAM

Crl. R.C. No. 1282 of 2018

S. Meenakshi

... Petitioner

-vs-

N. Muthukrishnan ... Respondent

Prayer:- Criminal Revision Petition filed under Section 397 read with Section 401 of Code of Criminal Procedure, 1973, to set aside the order passed in M.P. No. 63 of 2015 in M.C. No. 586 of 2005 on the file of the V Additional Family Court at Chennai dated 19.07.2018.

For Petitioner : M/s. J. Sundarakanchani

For Respondent : No appearance

O R D E R

This Criminal Revision Case has been filed by the Petitioner challenging the dismissal of the Petition filed by the Petitioner in M.P. No. 63 of 2015 in M.C. No. 586 of 2005 on the file of the V Additional Family Court, Chennai dated 19.07.2018.

2. The marriage between the Petitioner and the Respondent was solemnized on 04.04.1988 as per Hindu rites and customs, and thereafter, since the Respondent ill treated the Petitioner, she filed O.P. No. 825 of 2001 on the file of the Principal Family Court, Chennai seeking divorce, in which the Court has granted divorce on 15.11.2005, and thereafter, she filed an application under Section 125 of Cr.P.C. seeking maintenance, and the same has been numbered as M.C. No. 586 of 2005, and the same was disposed of on 22.08.2011 by the I Additional Family Court, Chennai directing the Respondent herein to pay a sum of Rs.7,000/- (Rupees Seven Thousand only) per month as maintenance. Aggrieved by the same, the Respondent herein has filed Crl. R.C. No. 1303 of 2011 before this Court, wherein this

Court by the order dated 05.09.2012 has reduced the maintenance from Rs.7,000/- (Rupees Seven Thousand only) per month to Rs.5,000/- (Rupees Five Thousand only) per month. Thereafter, she has filed a Petition under Section 127 of Cr.P.C. to alter the allowance for the maintenance, and the same has been numbered as M.P. No. 63 of 2015. The Trial Court, after enquiry, has dismissed the said Petition by the order dated 19.07.2018. Aggrieved by the same, the Petitioner has filed the present Criminal Revision Case.

3. Though notices were sent to the Respondent through Court and also privately, the said notices were returned as the Respondent has shifted his residence, and hence, this Court by the order dated 18.02.2020 has directed the Petitioner to take substituted service by publishing the hearing date in one of the issues in a Tamil Daily, having wide circulation in the area of the residence of the Respondent. Accordingly, the Petitioner has taken paper publication and produced a copy before this Court. Hence, this Court has directed the Registry to print the name of the Respondent in the cause-list and post the matter for arguments today. Today, the matter has been listed by printing the name of the Respondent in the cause-list, but the Respondent has not appeared either in person or through Counsel, and hence, after hearing the arguments of the learned Counsel for the Petitioner and perusing the materials, order is being passed in this Criminal Revision Case.

4. The learned Counsel for the Petitioner has submitted that the Petitioner is aged about 61 years, and she is not having any means to maintain herself. She further submitted that the Respondent was working in a Bank as the Manager, and he was drawing a monthly salary of Rs.70,000/- (Rupees Seventy Thousand only), and subsequently, he retired from the service on 31.05.2013, and the Respondent has produced Exhibit R.1 dated 01.08.2017, and the said document shows that in the year 2017, he got monthly pension of Rs.30,264/- (Rupees Thirty Thousand Two Hundred and Sixty Four only), and now the said amount would have been increased. She further submitted that at the time of retirement, he would have received retirement benefits such as, gratuity, P.F., leave salary, etc. Further, the cost of living has also escalated, and hence, the Petitioner has filed Petition under Section 127 of Cr.P.C. to raise the maintenance from Rs.5,000/- (Rupees Five Thousand only) to Rs.15,000/- (Rupees Fifteen Thousand only) per month. But the Trial Court has dismissed the said Petition by saying that the Petitioner is working in a Private Company, but she has suppressed the said fact. She further submitted that the Petitioner has deposed in her evidence that she was working in a Private Company upto the year 2001, and thereafter, she is not working anywhere, but

without taking into consideration of the said fact, the Trial Court has mechanically rejected the Petitioner's claim. She further submitted that the Respondent has not denied the fact that he got a considerable amount of retirement benefits, but he has taken a plea that from the said amount, he has discharged the loan, but to prove the said fact, he has not produced any evidence before the Court. Therefore, she prayed to set aside the order passed by the Trial Court and enhance the allowance for maintenance from Rs.5,000/- (Rupees Five Thousand only) to Rs.15,000/- (Rupees Fifteen Thousand only) per month.

5. A perusal of Exhibit R.1 shows that the Indian Bank has issued the said letter stating that the Respondent was getting monthly pension of Rs.30,264/- (Rupees Thirty Thousand Two Hundred and Sixty Four only) in the year 2017. Further, when the Petitioner was examined as P.W.-1, she had deposed that she was working in a Private Company, viz., A.S. Transport, till 2001, and thereafter, she was not called by the said Company, and hence, she is not working anywhere. The said answer was not at all denied by the Respondent. Though the Respondent has stated in his evidence that the Petitioner is working in a Private Company, he has not produced any documentary evidence to prove the said fact. Further, the Respondent has admitted in his evidence that he has received retirement benefits, but he has stated that he had discharged debts from and out of the said retirement benefits, but he has not produced any documentary evidence to substantiate the said plea. Further, the original order was passed in M.C. No. 586 of 2005 on 22.08.2011, and thereafter, naturally, the cost of living would have been escalated. But without taking into consideration of the aforesaid facts, the Trial Court has dismissed the Petition filed by the Petitioner.

6. Taking into consideration of the aforesaid facts, this Court is of the view that the Petitioner is entitled to get enhancement of maintenance. Accordingly, the order passed by the Trial Court is set aside. The monthly allowance for maintenance is enhanced from Rs.5,000/- (Rupees Five Thousand only) to Rs.9,000/- (Rupees Nine Thousand only). The said amount shall be paid from the date of filing of the Petition in M.P. No. 63 of 2015. The Respondent shall pay the arrears of maintenance at the enhanced rate within one month from the date of receipt of a copy of this order.

7. This Criminal Revision Case is allowed on the above terms. Considering the facts and circumstances of the case, the parties are directed to bear their respective costs.

Sd/-  
Assistant Registrar

// True Copy//

Sub Assistant Registrar

vjt

To

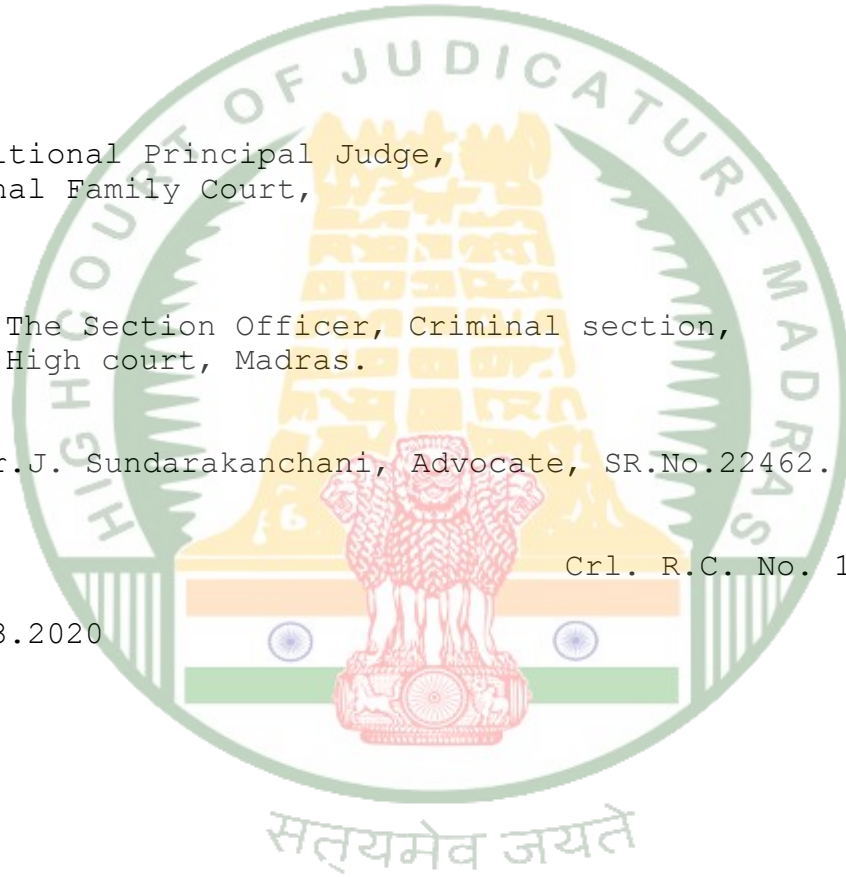
The V Additional Principal Judge,  
V Additional Family Court,  
Chennai.

Copy to: The Section Officer, Criminal section,  
High court, Madras.

+2cc to Mr.J. Sundarakanchani, Advocate, SR.No.22462.

Cr1. R.C. No. 1282 of 2018

KS (CO)  
CSR: 16.03.2020



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