

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2020

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN

Criminal Revision Case No.1367 of 2018
&
Crl.M.P.No.15866 of 2018

K.Dhananjayan

...Petitioner

Vs.

M.Sangeetha

...Respondent

Criminal Revision Case filed under Section 397 read with Section 401 Cr.P.C., to call for the records and to set-aside the order made in M.C.No.5 of 2015, dated 01.11.2018 on the file of the learned Judicial Magistrate No.II, Kancheepuram.

For Petitioner : Mr. J.Nagarajan

For Respondents: M/s. R.Amizhdu

O R D E R

Feeling aggrieved against the quantum of monthly maintenance of Rs.8,000/- awarded to the respondent herein in M.C.No.5 of 2015 on the file of the learned Judicial Magistrate No.2, Kancheepuram, the petitioner, who is the husband of respondent, has filed this Criminal Revision Case.

2. The marriage between the petitioner and the respondent took place on 22.05.2013. Since then, the respondent deserted the petitioner and has been living with her parents for no fault of the petitioner. The respondent has preferred a petition for Restitution of Conjugal Rights. The petitioner has preferred a petition for divorce. Both the petitions are pending before the Sub-Court, Kancheepuram. According to the petitioner, as a measure of harassment the respondent has preferred Maintenance Case No.5 of 2015 before the learned Judicial Magistrate No.II,

Kancheepuram. After contest, the Court below ordered a sum of Rs.8,000/- per month, as maintenance, payable by the petitioner to the respondent herein, against which the petitioner has preferred this Case.

3. Heard both sides.

4. The learned counsel for the petitioner submitted that the Court below brushed aside the fact that the respondent had worked in a lucrative job and earned a sum of Rs.49,000/- as monthly income and she is under the patronage of her affluent father and in such circumstances, the respondent could maintain herself; the trial court having found that the respondent had not marked any document pertaining to the employment status and possession of income deriving from the properties, erred in awarding Rs.8,000/- as maintenance to her; the order of the trial court was passed on presumption and assumption and as such, the same has to be set-aside.

5. Per contra, the learned counsel for the respondent submitted that the Court below has analysed each and every aspects in detail and based on evidence on record has rendered its findings and quantified the maintenance amount, which in-fact less and not more; the findings of the Court below do not require any interference by this Court. He further submitted that though the order of the Court below was made on 01.11.2018, no amount was paid by the petitioner thus far.

6. This Court has considered the rival submissions made by the learned counsel for both sides and perused the materials available on record.

7. The first and foremost contention of the learned counsel for the petitioner that the respondent had worked in a lucrative job and earned a sum of Rs.49,000/- as monthly income and hence she could maintain herself has no legs to stand, since the husband is bound to maintain the wife and he cannot escape from the said responsibility citing her education and capacity to secure employment (See : Ashok Kumar Singh v. VI Additional Sessions Judge, Varanasi, 1991 Cri.L.J. 2357 (All) : 1991 (89) ALJ 925 and T.Muraleedharan v. C.P.Vijayalakshmi, 2007 Cri.L.J. (NOC) 569 (ker) : 2006 (4) Crimes 335).

8. It is seen that Ex.R-1-Reliving order of the employment of the petitioner has been filed by him to show that he has been terminated from service and not in employment. Except this, no other document was filed by the petitioner herein. Equally, Exs.P-1 to P-3-Marriage Invitation, Marriage Photos and Family Photo Xerox copy have been produced by the respondent herein, apart from her evidence, to show that the marriage between the

respondent and petitioner took place. Based on the documents and evidence available on record, the Court below has determined the monthly maintenance at Rs.8,000/-, to the respondent.

9. This Court is of the opinion that in determining the amount of maintenance, the necessities of life should be considered, according to the status of the parties and the means of the petitioner. Whatever may be the respondent's right under the Civil Law, under Section 125, she cannot get more than food, clothes and lodging. Not only the needs of the respondent, but the paying capacity of the petitioner should be considered. In the case on hand, the petitioner has contended that he is not in any employment and his needs are being taken care of by his parents and such a contention was supported by Ex.R-1 also. Apart from that, no document was filed or evidence adduced by the respondent before the Court below with regard to the income or properties owned by the petitioner. Hence, considering the materials available on record and in the facts and circumstances of the case, this Court is of the view that the quantum so fixed by the Court below is slightly on the higher side and the same is hereby reduced to Rs.6,000/- per month, that would meet the ends of justice.

10. Accordingly, this Criminal Revision Case is disposed of. The arrears of monthly maintenance amount at the rate of Rs.6,000/- per month, from the date of petition of the Maintenance Case till February 2020 shall be paid in four equal monthly instalments (i.e.,) on or before 10.03.2020, 05.04.2020, 05.05.2020 and 05.06.2020, respectively. Needless to state that the petitioner shall continue to pay the monthly maintenance at the rate of Rs.6,000/- starting from March 2020 on or before 5th of every succeeding English Calendar month. It is made clear that if the monthly maintenance or arrears of maintenance amount is not paid by the petitioner, as stipulated above, it is open to the respondent to initiate appropriate proceedings to recover the same from the petitioner. Consequently the connected CrI.MP is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk

To

1. Judicial Magistrate No.II,
Kancheepuram.

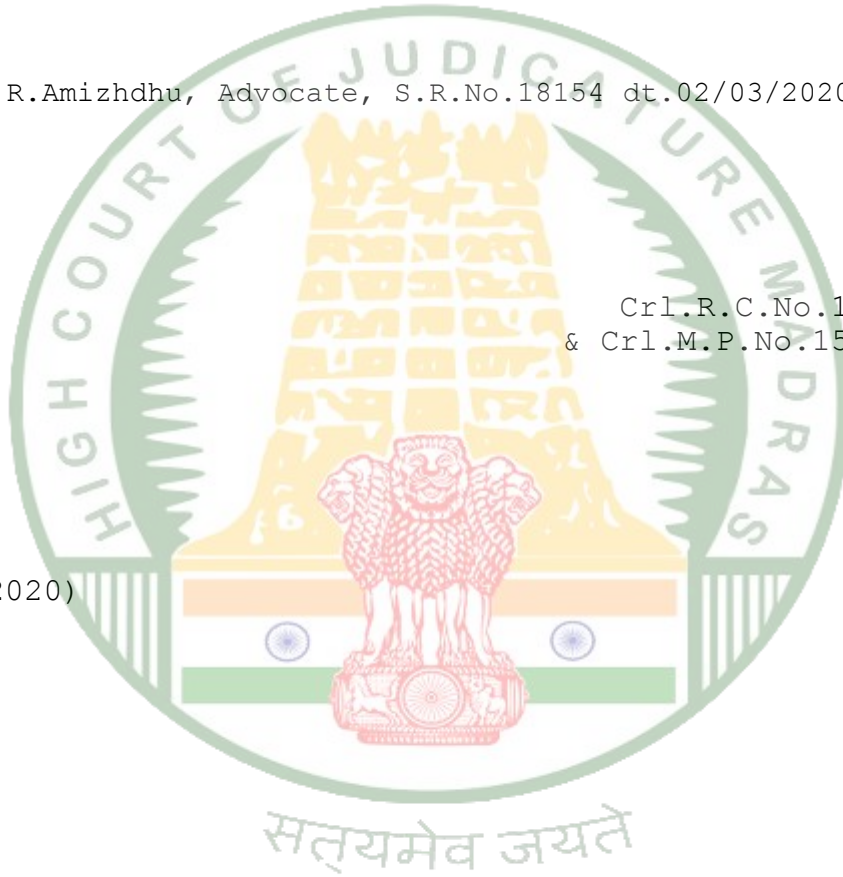
2. Sub Judge,
Kancheepuram

+1cc to Mr.J.Nagarajan, Advocate, S.R.No.17627 dt.28/02/2020

+1cc to Mr.R.Amizhdhu, Advocate, S.R.No.18154 dt.02/03/2020

Crl.R.C.No.1367 of 2018
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PM(CO)
RN(08/06/2020)



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