



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2020

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.6100 of 2018
and
Crl.M.P. (MD)No.2911 of 2018

V.Satya Singh

... Petitioner

-vs-

1.Premalatha

2.Minor. S.Albert,

(represented by his next friend and mother)

Both are at 136B,damodar Nagar,

Thoothukudi, Thoothukudi District.

... Respondents

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code to set aside both the orders passed in Crl.R.C.No.14 of 2017 dated 03.11.2017 on the file of the learned District and Sessions Court, Thoothukudi enhancing the maintenance award passed in M.C.No.10 of 2015 dated 02.03.2017 on the file of the learned Chief Judicial Magistrate Court, Thoothukudi.

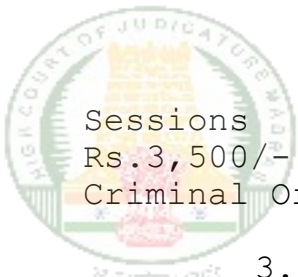
For Petitioners : Mr.K.Gurunathan

For Respondents: Mr.M.P.Senthil

O R D E R

Heard the learned counsel on either side.

2.The petitioner got married to the first respondent on 16.02.2011. The second respondent herein was born through the said wedlock on 01.12.2012. The relationship between the parties suffered a break down. The respondents filed M.C.No.10 of 2015 before the Chief Judicial Magistrate, Thoothukudi. The learned Chief Judicial Magistrate, by order dated 02.03.2017 directed the petitioner to pay a sum of Rs.3,500/- (Rupees Three Thousand and Five Hundred only) per month, as maintenance. Aggrieved by the same, the petitioner filed Cr.R.C.No.14 of 2017 before the II Additional District and Sessions Judge, Thoothukudi. By order dated 03.11.2017, the learned II Additional District and



Sessions Judge, enhanced the maintenance amount from Rs.3,500/- to Rs.5,000/- per month. Challenging the same, this Criminal Original Petition came to be filed.

3. The learned counsel for the petitioner would contend that the petitioner is earning only a sum of Rs.12,000/- per month as of now, in a private company. He further stated that the first respondent left the matrimonial home on her own. His further contention is that the Sessions Court could not have enhanced the maintenance amount in the revision filed by the petitioner herein. If at all any enhancement or alteration has to be made, it could have been done at the instance of the respondents either in their revision or in a petition under Section 128 of Cr.P.C. In this case, neither of the situation obtained. In support of this contention, the petitioner placed reliance on a decision reported in **2002 Cr1.L.J. 2894** in the case of **Raj Kumar Vs. Shanta Bai**. In the said decision, the learned Judge of the Rajasthan High Court held as follows:

13.A reading of S.126, Cr.P.C., would show that it provides for procedure and the jurisdiction of the Court where an application under S.125, Cr.P.C., could be filed. Section 127, Cr.P.C., which is for alteration in the amount is completely different and for this S.126, Cr.P.C., has no application. Section 127(1) Cr.P.C., provides a proof of change in the circumstances of any person, receiving under S.125 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife, child, father or mother, as the case may be, the magistrate may make such alteration in the allowance as he thinks fit. The words "the Magistrate" would mean the Magistrate who has passed the first order or maintenance because Court is strengthened in this interpretation by the fact that S.128, Cr.P.C., which is the section for enforcement order of maintenance specifically provides that such petition under S.125, Cr.P.C., may be presented before "any Magistrate". Therefore, in these circumstances, the petition under S.127, Cr.P.C., will have to be filed before the Magistrate who has passed the first order of maintenance. Similar view has been taken by Andhra Pradesh High Court in the case of G.Balraj V.Smt.Mallamma reported in 1984 Cr.LJ 1170."

He would further contend that the Sessions Judge has not assigned any reason for making the enhancement.

4. Eventhough, the learned counsel for the respondent would want me to sustain the impugned order, I am of the view that technically the impugned order is vulnerable. The petitioner agrees to abide by



the order passed by the learned Chief Judicial Magistrate, Thoothukudi in M.C.No.10 of 2015 dated 02.03.2017.

5.This Court even while setting aside the order passed by the learned II Additional District and Sessions Judge, Thoothukudi, in Cr.R.C.No.14 of 2017 dated 03.11.2017, sustain the order passed by the learned Chief Judicial Magistrate, Thoothukudi in M.C.No.10 of 2015 dated 02.03.2017. It is open to the respondent to file a petition under Section 128 of Cr.P.C.

6.With this liberty, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition stands closed.

Sd/-

ASSISTANT REGISTRAR(WTRIS)

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SUB ASSISTANT REGISTRAR(CS)

pnn

To

1.The II Additional District and Sessions Judge, Thoothukudi.

2.The Chief Judicial Magistrate, Thoothukudi.

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

+1 CC to M/s.K.GURUNATHAN, Advocate (SR-9825[F] dated 03/03/2020)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-9833[F] dated 03/03/2020)

Crl.O.P. (MD)No.6100 of 2018

and

Crl.M.P. (MD)No.2911 of 2018

02.03.2020

MKB(16.03.2020)/3P/6C