



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.12.2021

Pronounced on : 09.12.2021

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.Nos.603 of 2010 & 387 of 2014
and
M.P.No.1 of 2014

Crl.R.C.No.603 of 2010:

Tmt.Vimal ... Petitioner/Petitioner
Versus

S.Venkatesan ... Respondent/Respondent

Crl.R.C.No.387 of 2014:
Venkatesan ... Petitioner/Respondent
Versus

Vimal ... Respondent/Petitioner

Prayer in Crl.R.C.No.387 of 2014 : Criminal Revision Case is filed under Sections 397 r/w 401 of Cr.P.C., to set aside the order dated 16.09.2013 made in M.C.No.2 of 2008, on the file of the Judicial Magistrate Court No.III, Vellore and allow the above Criminal Revision.

Prayer in Crl.R.C.No.603 of 2010: Criminal Revision Case is filed under Sections 397 r/w 401 of Cr.P.C., to set aside the order passed by the Learned Chief Judicial Magistrate, Vellore in M.C.No.38 of 2006, dated 13.10.2009 and allow the above Criminal Revision case by enhancing the maintenance.

In Crl.R.C.No.603 of 2010:

For Petitioner : Mr.V.Sai Ram
For Respondent : Mr.V.Jagannathan

In Crl.R.C.No.387 of 2014:

For Petitioner : Mr.C.Prabakaran
For Respondent : Mr.V.Sai Ram

COMMON ORDER

In a conflict between the husband/Mr.Venkatesan and the wife / Tmt.Vimal, two revision cases are laid before this Court.



2.Crl.R.C.No.387 of 2014 is filed by the husband / Mr.Venkatesan as against the order dated 16.09.2013 of the Learned Judicial Magistrate No.III, Vellore in M.C.No.2 of 2008, thereby, granting the reliefs of (a) return of 15 sovereigns of Jewels and Rs.25,000/- belonging to the petitioner and (b) to pay a monthly maintenance being a sum of Rs.2,000/- to the petitioner.

3. Crl.R.C.No.603 of 2010 is filed before this Court aggrieved by the quantum of maintenance ordered by the Learned Judicial Magistrate, Vellore, by the petitioner/wife in M.C.No.38 of 2006 which is filed under Section 125 of Cr.P.C., whereby, the Learned Magistrate has fixed a sum of Rs.2,000/- and praying for enhancement of the said sum of Rs.2,000/-.

4.Heard Mr.Prabharan, the Learned Counsel appearing on behalf of the husband and Mr. V. Sai Ram, Learned Counsel appearing on behalf of the wife.

5.As far as Crl.R.C.No.387 of 2014 is concerned, the primary contention of the counsel for the husband is two fold.

(i) Firstly, the Trial Court while awarding the maintenance and directing return of the Stridhana articles, omitted to consider that he has already filed a petition in H.M.O.P.No.22 of 2004 for the relief of divorce, which was granted in his favour. However, in H.M.C.M.A.No.17 of 2012 filed by the wife, the same was reversed, against which, the husband has preferred a petition in C.M.S.A.No.51 of 2013, which is pending for disposal. Therefore, the Learned Magistrate ought not to have granted the relief of return of Stridhana articles. This apart, the wife had also filed a petition in M.C.No.38 of 2006 under Section 125 of Cr.P.C., and therefore, the monthly maintenance ought not to have awarded under the Protection of Women from Domestic Violence Act.

(ii) As far as the first contention of the Learned Counsel for the petitioner, I find that CMSA.No.51 of 2013 has been dismissed by this Court on 11.04.2018, thereby, holding in favour of the wife and dismissing his petition for divorce and therefore, the said ground no longer exists. The second ground alleged is that when the maintenance case is filed by the wife, under Section 125 of Cr.P.C., maintenance cannot be claimed under Section 25 of the Protection of Women from Domestic Violence Act, 2005. According to me, this ground is without any substance, in view of the Judgment of the Hon'ble Supreme Court in Rajnesh Vs. Neha (2021 2 SCC 324), whereby the Supreme Court has categorically held that simultaneously or successively the wife can claim maintenance, under Section 125 of Cr.P.C., and under The Protection of Women from Domestic Violence Act, 2005



and the interim maintenance under Section 24 of the Hindu Marriage Act or other enactments. However, the Court which passes the order later in point of time have to take it into account, the amount awarded in the earlier proceedings. Therefore, the Learned Magistrate while passing order in M.C.No.02 of 2008, which is subsequent in point of time ought to have taken into account, the earlier sum of Rs.2,000/- awarded as maintenance under Section 125 of Cr.P.C.

6.In view of the above, and in view of the directions issued in the later portion of this judgment, the second submission of the learned counsel for the petitioner is also rejected.

7.Coming to the grievance of the wife that the sum of Rs.2,000/- awarded by the Learned Judicial Magistrate in M.C.No.38 of 2006 in the petition filed by her under Section 125 of Cr.P.C., is very low and it should be enhanced, it is the contention of the petitioner that the income of the respondent/husband was Rs.25,000/- at the relevant point of time, therefore, the Court below ought to have ordered a sum of Rs.3,000/- from the date of petition.

8.Upon considering the materials on record and the capacity of the husband/Mr.Venkatesan, I am inclined to modify both the orders passed under Section 125 of Cr.P.C., and under Section 20 of the Protection of Women from Domestic Violence Act, 2005, as follows:-

(i) the wife/ Tmt.Vimal, will be entitled for maintenance of a sum of Rs.2,000/- per month, from the date of petition in MC.No.38 of 2006 viz., 26.07.2006 until January 2008.

(ii) From February 2008 i.e., from the date of petition filed under Domestic Violence Act, till the month of September, 2013 i.e., till the date of order in the Domestic Violence petition, the wife will be totally entitled to Rs. 4,000/- per month, that is Rs. 2,000/- as awarded by the Learned Magistrate in Section 125 proceedings and Rs. 2,000/- as awarded in the Domestic Violence Proceedings;

(iii) From the October 2013, till date, the wife will be entitled to a total sum of Rs. 5,000/- per month as maintenance, that is Rs. 2,000/- under the Domestic Violence Act proceedings and Rs. 3,000/- in the proceedings under Section 125 Cr.P.C;

(iv) The parties therefore shall calculate the amounts accordingly and after adjusting the amounts already paid, the balance of arrears shall be paid by the husband within two months from the date of receipt of the copy of this order;



(v) Accordingly, the order of the Trial Court in M.C.No.38 of 2006 is modified to the effect that the wife is entitled for a maintenance of Rs.2,000/- per month, from the date of petition, till September, 2013 and from the month of October, 2013, it shall be a sum of Rs.3,000/-;

(vi) The order in M.C.No.2 of 2008, remains the same that the wife will be entitled for a sum of Rs.2,000/- as monthly maintenance, which will be over and above the amount received by her under Section 125 of Cr.P.C..

9.Thus, the Criminal Revision Cases are disposed of on the above terms. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
The Judicial Magistrate Court No.III,
Vellore.
2. The Chief Judicial Magistrate,
The Chief Judicial Magistrate Court,
Vellore.
3. The Section Officer,
Criminal Section (Records),
High Court, Madras - 104.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.65617

+1cc to Mr.V.V.Sairam, Advocate, S.R.No.65658

CrI.R.C.Nos.603 of 2010 & 387 of 2014
and
M.P.No.1 of 2014

BR[co]
NSK 22/12/2021