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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2021

CORAM :

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.NOS.302 AND 304 OF 2020 AND
CRL.M.P.NOS.2261 AND 2262 OF 2020

In Crl.R.C.No.302 of 2020

P.Arunkumar

...Petitioner

Vs.

1.B.Karthiga

2.A.Nithaesh

Minor, aged 4 years,
represented by mother & Natural
guardian B.Karthiga, 1st respondent

...Respondents

In Crl.R.C.No.304 of 2020

1.B.Karthiga

2.A.Nithaesh aged 1 1/2 year,
minor rep.by 1st petitioner mother and
natural guardian, B.Karthiga

...Petitioners

Vs.

P.Arunkumar

...Respondent

Prayer in Crl.RC.No.302 of 2020 : Criminal revision is filed under Section 397 read with Section 401 of Criminal Procedure Code, to call for the records in M.C.No.40/2016 on the file of learned Judicial Magistrate I at Tambaram and set aside the judgment made in M.C.No.40/2016 ordering maintenance of Rs.11,000/- to each respondent by judgment dated 13.12.2019.

Prayer in Crl.RC.No.304 of 2020 : Criminal revision is filed under Section 397 read with Section 401 of Criminal Procedure Code, to call for the records of the order dated 13.12.2019 passed in M.C.No.40 of 2016 on the file of the Judicial Magistrate Court No.I at Tambaram and set aside the same with respect to the quantum alone and enhance the maintenance.



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Crl.R.C.No.302 of 2020 :

For Petitioner : M/s.T.P.Kathirraavan

For Respondent : M/s.J.Saravanvel

Crl.R.C.No.304 of 2020 :

For Petitioner : M/s.J.Saravanvel

For Respondent : M/s.T.P.Kathirraavan

COMMON ORDER

(The case is heard through video conference)

The petitioner in Crl.R.C.No.302 of 2020 is husband and the petitioners in Crl.R.C.No.304 of 2020 are wife and child. The wife had filed a maintenance case in M.C.No.40 of 2016 before the learned Judicial Magistrate-I, Tambaram, seeking maintenance of Rs.30,000/- for herself and a sum of Rs.20,000/- for the child and after enquiry, the learned Magistrate ordered a sum of Rs.11,000/- each by order dated 13.09.2019. Against the same, the husband has filed the present criminal revision case to set aside the same and the wife has also filed the present criminal revision case before this Court for enhancement.

2. Since, the criminal revision cases have been filed against the same order passed by the learned Judicial Magistrate-I, Tambaram, in M.C.No.40 of 2016 dated 13.09.2019, both the matters are hereby disposed of by this common order. For the sake of convenience, the parties are referred to as per their relationship as husband and wife.

3. The case of the wife is that their marriage was solemnised on 15.04.2013 and the child was born on 12.03.2015. The husband was working in a company at Bangalore and was earning salary of Rs.1,40,000/- and after marriage, due to misunderstanding, the wife and child are living separately from the husband. While so, the wife filed a petition for divorce and the husband filed a petition for restitution for conjugal right in the year 2016 and both the petitions are pending before the Family Court. Since, the wife is not employed anywhere, she is unable to maintain herself and the child and the husband is working at Bangalore and getting salary of Rs.1,40,000/- per month and having sufficient means to not maintain the wife and child. Therefore, the wife had filed the maintenance case before the Family Court.



4. The case of the husband is that though he is working and earning, his sister's husband is not having any job and he is suffering with Kidney ailments. Therefore, the husband is taking medical care of his sister's husband and he is also taking care of his aged parents and they are residing in a rental house. Therefore, the earnings of the husband is not sufficient to maintain his aged parents and his sister's family and to meet their medical expenses. Though the wife was not working at the time of marriage, subsequently in the year 2017, she joined in a company and was getting salary of Rs.21,000/- per month and she resigned the job only in the year 2018 and she was having income during pendency of the maintenance case and she is capable of earning for her livelihood. When the wife is unable to maintain herself means, she is neither earning, nor capable of earning. Then only the husband is liable to maintain the wife and if the wife is capable of earning income for her own expenses, then she is not entitled for any maintenance. The learned Magistrate failed to consider the fact that even prior to marriage, the wife was working and even after leaving from the matrimonial home, during pendency of the maintenance case, she was working for sometime and therefore, the wife is capable of working and capable of earning money. Further, the learned Magistrate failed to appreciate the expenditure born by the husband and the earning capacity of the wife and ordered Rs.11,000/- each per month, which warrants interference.

5. Heard the learned Counsel for the husband and the learned Counsel for the wife and perused the materials on record.

6. The contention of the learned counsel for the husband is that though the husband is having income of Rs.1,40,000/- per month, he is having more expenditure than the income as his sister's husband is suffering from Kidney ailments, the husband only taking care of his medical expenses and he is also taking care of his aged parents and their medical expenses, food and shelter and also paying the rent. The wife is capable of earning income. Even after separating from the husband, she was working for sometime and since, the maintenance case was pending and the husband identified that she is working, in order to get over from the defence of the husband, all of a sudden, she resigned the job and showed that she was not having any means for maintaining herself and the trial Court failed to appreciate that despite the wife having capacity of earning and even during pendency of the maintenance case she was earning income.

7. The contention of the learned counsel for the wife is that initially the husband had not shown his income and after taking much effort, atlast she got the salary slip from the employer of the husband and proved that the husband is earning Rs.1,40,000/- per month. Though the wife was working prior to

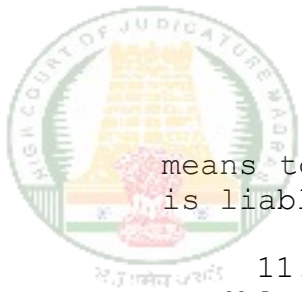


the marriage, at the time of marriage, she left her job and did not go for any work until she separated from the husband. Thereafter, since she has no means to maintain herself and the child and she was unable to get maintenance from the husband, she was compelled to go for work and she joined the duty only in the year 2017. Subsequently, since she could not look after her child, she resigned the job on 30.06.2018. Even though the wife was not working from the date of filing of the petition, the learned Magistrate ordered maintenance only with effect from 01.07.2018 onwards i.e. after she resigning the job and not from the date of filing of the petition. Further, the husband is getting salary of Rs.1,40,000/- and whatever the expenses showed by him are not excessive considering the salary of the husband. Even otherwise, a dutiful husband is liable to maintain his wife and children.

8. It is seen that the husband is not able to prove that the wife is having sufficient means to maintain herself but, the wife has proved that at the time of filing the petition for maintenance, she was not earning and even on the date order of maintenance case, she was not working. Though, the learned Magistrate has ordered maintenance, it is very meagre and not sufficient considering the income of the husband and the order of the learned Magistrate is not proportionately reasonable. Therefore, the wife has filed the revision for enhancement of the maintenance.

9. The marriage between the parties is not in dispute, the paternity of the child is not in dispute, the petitioner/husband is working at Bangalore and getting salary of Rs.1,40,000/- per month is also not disputed. At the time of marriage and at the time of filing the maintenance case, the wife was not working and the same is also not in dispute. The only dispute is according to the husband, though the wife is capable of earning income for her livelihood, she claimed maintenance from the husband as if, she is not having capacity of earning any income. According to wife, though she worked before marriage, subsequently she resigned the job and after separating from her husband, she worked for about one year since she could not maintain herself and the child. However, since no one was there to look after her child, she was forced to resign the job. Even at the time of filing the maintenance petition and at the time of passing order, she was not working.

10. Except the admitted fact that the wife has worked for some time, the husband has not proved that she is having sufficient means to maintain herself, whereas, the wife has proved that the husband is earning salary of Rs.1,40,000/- p.m. Therefore, considering the earning capacity of the husband and considering the fact that the wife and child are not having



means to maintain themselves, the revision filed by the husband is liable to be dismissed.

11. It is pertinent to refer to the recent decision of the Hon'ble Supreme Court in which, it has been held that the state of the wife has to be maintained on par with the husband. Though the wife is capable of earning, the learned Magistrate has only ordered a sum of Rs.11,000/- each which is very meagre. Even assuming that the wife is working and getting salary of about Rs.20,000/- per month, considering the cost of living and the earning capacity of the husband, this Court is inclined to enhance the maintenance ordered by the learned Magistrate. Accordingly, the maintenance of Rs.11,000/- awarded to the wife is enhanced to Rs.15,000/- per month and the maintenance of Rs.11,000/- awarded to the child is enhanced to Rs.20,000/- per month.

12. The husband is directed to pay a sum of Rs.15,000/- as monthly maintenance to the wife with effect from 01.07.2018 and to pay sum of Rs.20,000/- towards monthly maintenance to the child from the date of filing of maintenance petition besides, the husband is also directed to bear the educational expenses of the child provided that the wife produces all the fees receipts and other proof for the educational expenses. Further, the husband shall pay the arrears of maintenance within a period of two months from the date of receipt of copy of this order.

13. With the above modification, the Criminal Revision Case filed by the husband is dismissed and the Criminal Revision Case filed by the wife and child is partly allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ksa-2/dsn

To

The Judicial Magistrate-I,
Tambaram.

+1cc to M/s.J.Saravana Vel, Advocate, S.R.No.54606

+1cc to M/s.V.Parthiban, Advocate, S.R.No.54482

Cr1.R.C.Nos.302 and 304 of 2020

RGN(CO)
RVM(23/11/2021)