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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Cr1.R.C.No.1298 of 2015

P.N.Palanivel

... Petitioner

Vs.

1.R.Jothilakshmi

2.Minor Kabila

Represented by her mother and

Natural guardian

R.Jothilakshmi

... Respondents

Prayer:

Petition filed under Section 397 r/w 401 of Criminal Procedure Code, seeking to allow the criminal revision by setting aside the order dated 11.12.2014 passed in Cr1.R.C.No.15 of 2014 on the file of the First Additional Sessions Judge, Erode against the order dated 03.03.2014 in M.C.No.4 of 2009 on the file of the Judicial Magistrate No.1, Gobichettipalayam.

For Petitioner : Mr.K.Soundararajan

For Respondents : Mr.I.C.Vasudevan

O R D E R

The petitioner has filed this petition seeking to set aside the order dated 11.12.2014 made in Cr1.R.C.No.15 of 2014 by the learned First Additional Sessions Judge, Erode.

2.The facts of the case is that the marriage between the petitioner and the first respondent was solemnized on 02.05.2005 at Kallipatti and after three months the first respondent got conceived and thereafter, there was matrimonial dispute inbetween them and the petitioner driven out the first



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respondent from the matrimonial home. Thereafter, the second respondent was born and when the second respondent was ten months old, the respondents were sent to the matrimonial, however, again the first respondent was driven out from the matrimonial home along with the second respondent. Since the first respondent was not able to maintain herself and second respondent, she filed M.C.No.4 of 2009 before the learned Judicial Magistrate No.1, Gobichettipalayam seeking maintenance of Rs.2,000/- each per month.

3.The maintenance case was dismissed on the ground that already the petitioner had filed H.M.O.P.No.49 of 2011 before the Sub Court, Sankagiri seeking restitution of conjugal rights and the same was allowed, however, the first respondent has refused to live along

with the petitioner and on the ground that already the first respondent has filed suit in O.S.No.85 of 2010 and I.A.No.958 of 2013 before the District Munsif Court, Gobichettipalayam and the said suit was decreed in her favour and a sum of Rs.2,000/- per month each was awarded in favour of the respondents. Aggrieved by the same, the respondents filed CrI.R.C.No.15 of 2014 before the learned First Additional Sessions Judge, Erode. After elaborate discussion, the said revision was allowed and a sum of Rs.3,000/- per month was awarded as maintenance in favour of the first respondent and sum of Rs.5,000/- per month was awarded as maintenance in favour of the second respondent. Challenging the same, the petitioner has filed this revision.

4.The learned counsel appearing for the petitioner submitted though the respondents claim only a sum of Rs.2,000/- towards maintenance, the lower Appellate Court has suo motu enhanced the amount by awarding a sum of Rs.3,000/- per month towards maintenance in favour of the first respondent and sum of Rs.5,000/- per month towards maintenance in favour of the second respondent, which is un-sustainable one. The amount awarded by the lower Appellate Court is prima facie illegal and is on higher side.

5.The learned counsel appearing for the respondents submitted that the lower Appellate Court, after elaborate discussion has arrived at the right conclusion and hence the order passed by the lower Appellate Court warrants no interference.



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6.The facts in the case is not disputed and the relationship between the parties is not disputed. Admittedly, the maintenance case filed by the respondents was dismissed on the ground that already the petitioner had filed H.M.O.P.No.49 of 2011 before the Sub Court, Sankagiri seeking restitution of conjugal rights and the same was allowed, however, the first respondent refused to live along with the petitioner and on the ground that already the first respondent has filed suit in O.S.No.85 of 2010 and I.A.No.958 of 2013 before the District Munsif Court, Gobichettipalayam and the said suit was decreed in her favour and a sum of Rs.2,000/- per month each was awarded towards maintenance in favour of the respondents.

7.Even though a sum of Rs.2,000/- per month each was awarded towards maintenance in favour of the respondents, in the interlocutory application filed by the respondents in the suit, it is not a

bar for filing maintenance case petition. Further exparte order was passed by the Sub Court, Sankagiri in H.M.O.P.No.49 of 2011 filed by the petitioner seeking restitution of conjugal rights and hence, it is also not a bar for filing maintenance case under Section 125 of Cr.P.C.

8.The other crucial issue which arise for consideration is whether amount awarded in favour of the respondents over and above their claim is permissible or not. This Court perused the order impugned in this revision. The respondents have claimed a sum of Rs.2,000/- each per month towards maintenance, however, the lower Appellate Court without any adjudication, has suo motu enhanced the amount and awarded a sum of Rs.3,000/- per month and a sum of Rs.5,000/- per month respectively, towards maintenance in favour of the respondents, which is not sustainable.

9.Hence, the amount awarded towards maintenance in favour of the respondents vide order dated 11.12.2014 made in Cr1.R.C.No.15 of 2014 by the learned First Additional Sessions Judge, Erode, is modified to the effect that the petitioner is directed to pay a monthly maintenance of Rs.2,000/- each to the respondents from the date of petition. This Court directs the petitioner to deposit the entire arrears amount as per the modified award amount to the credit of M.C.No.4 of 2009 before



the learned Judicial Magistrate No.1, Gobichettipalayam, less the amount already deposited, if any, as expeditiously as possible. This Court grants liberty to the respondents to file appropriate petition seeking enhancement in maintenance amount, if so advised, before the appropriate forum.

10.This revision is accordingly disposed of.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1.The First Additional Sessions Judge,
Erode.

2.The Judicial Magistrate No.1,
Gobichettipalayam.

3. -do- Through The Chief Judicial Magistrate, Erode.

+1CC to M/s.V.Soundararajan, Advocate, SR.No. 54162

+1CC to M/s.I.C.Vasudevan, Advocate, SR.No. 45396

Cr1.R.C.No.1298 of 2015

PMK(CO)

B.VC (12/10/2021)