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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.121 of 2021

and

Crl.M.P.No.2429 of 2021

N.Ganapathi

... Petitioner

Vs.

G.Sasikala

... Respondent

PRAYER : Criminal Revision is filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the order dated 19.02.2020 made in M.C.No.5 of 2016 on the file of the Judicial Magistrate, Cheyyar, Tiruvannamalai District and to allow the above Criminal Revision Petition.

For Petitioner : Mr.S.Kasirajan

For Respondent : Mr.R.Balagurusamy

O R D E R

This Criminal Revision Case has been filed to set aside the order dated 19.02.2020 made in M.C.No.5 of 2016 on the file of the Judicial Magistrate, Cheyyar, Tiruvannamalai District.

2. The petitioner is the husband and the respondent is the wife. Both the petitioner and respondent are now living separately. Earlier, there was a complaint for Domestic Violence Act, 2005 and subsequently, the respondent filed a petition under Section 125(1)(a) of the Criminal Procedure Code for maintenance before the Judicial Magistrate, Cheyyar, Thiruvannamalai District.

3. The case was taken on file in M.C.No.5 of 2016 by the Trial Court. After trial, the Trial Court awarded a sum of Rs. 15,000/- per month towards her monthly maintenance from the date of petition. Challenging the said order, the present criminal revision is filed.

4. Learned counsel for the petitioner would submit that the petitioner is only a driver, other than the income from driving, he has no other source to survive himself and the respondent left the matrimonial home without any valid reason. further, he would submit that the respondent already filed a



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complaint before the Judicial Magistrate, Cheyyar, Thiruvannamalai District under Domestic Violence Act, 2005 and directed the first respondent is directed to pay a monthly maintenance of Rs.2,500/-. The respondent has not proved the income of the petitioner.

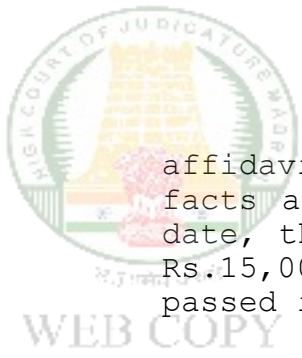
5. Though the respondent has stated that he has a house, agricultural lands and also finance business during the cross examination, she admits that none of the abovesaid properties and business is in the name of the petitioner. Therefore, the respondent/wife has not proved the source of income of the petitioner except the fact that he is a driver. Therefore, the award passed by the learned Magistrate for a sum of Rs.15,000/- is highly excessive and further, already in a domestic violence, monthly maintenance of Rs. 2,500/- was ordered, totally Rs.17,500/-, which is too high and a driver cannot afford the said amounts to his wife monthly. Therefore, he prayed to reduce the same.

6. Learned counsel for the respondent would submit that there was a domestic violence between the petitioner and the respondent. Therefore, the respondent left the matrimonial home and since she has no source of income to maintain herself, she filed a petition before the learned Judicial Magistrate under Domestic Violence Act under Section 125(a) (1) of Cr.P.C.

7. The Magistrate rightly appreciated the evidence and the fact that the petitioner has source of income and the respondent has no income and also she has no means to maintain herself and she is also incurring medical expenses also. Therefore, the Magistrate rightly awarded a sum of Rs.15,000/- and there is no merit in the revision and the same is liable to be dismissed.

8. Heard both sides and perused the materials available on record.

9. Admittedly, the petitioner and the respondent are husband and wife. The marriage between them was solemnized on 15.04.2013 and the same is not disputed. The fact that they are now living separately is also not in dispute and she had already filed a case under Domestic Violence Act, 2005 and the Court awarded a sum of Rs.2,500/- as monthly maintenance. Though the properties does not stand in the name of the petitioner, he, however, admitted that his family has got family property and family business and they are having a car in their name and doing transport business. However considering the background of the case, this Court does not find any perversity in the order passed by the learned Magistrate. However, the quantum of award of maintenance amount is concerned, the respondent has not proved the exact income of the petitioner as per the guidelines given by the hon'ble Supreme Court, the petitioner has not filed any



affidavit for proof of his income. Therefore, considering the facts and circumstances of the case and cost of living as on date, this Court modified the award of maintenance amount from Rs.15,000/- to Rs.10,000/- in addition to that the award passed in the domestic violence case.

10. The petitioner is directed to pay arrears amount by way of six installments of Rs. 1,00,000/- p.m. on or before 30th of every month. In addition to that, he is also directed to pay monthly maintenance of Rs.10,000/- and Rs.2,500/- in the Domestic Violence Act, i.e. totally Rs. 12,500/- on or before 5th of every month. In the event of failure on the part of the Petitioner to pay any one of the instalment or payment of monthly maintenance, the learned Magistrate is directed to issue a warrant and execute the order passed by the Magistrate in accordance with law without any formal application.

11. Accordingly, the criminal revision is dismissed with above modification.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Cheyyar, Tiruvannamalai District
2. The Chief Judicial Magistrate,
Tiruvannamalai.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.32952

+1cc to Mr.R.Balagurusamy, Advocate, S.R.No.32505

Cr1.R.C.No.121 of 2021

GSM(CO)
RLP(19/07/2021)