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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.R.C. NO. 905 OF 2014

1. Ilavarasi @ Meharunnisa
2. Minor Mohammed Ashadh Khan

...Petitioners

(Minor second petitioner through his mother
and next friend the first petitioner)

Vs.

Rafiqu Khan

... Respondent

Criminal Revision filed under Section 397 read with Section 401 of Code of Criminal Procedure to enhance the maintenance order passed by the Judicial Magistrate, Sankarapuram made in M.C. No. 7 of 2013 dated 27.06.2014 from Rs.2,000/- to Rs.5,000/- to the First Respondent and Rs.1,000/- to Rs.5,000/- to the Second Petitioner totally a sum of Rs.3,000/- to Rs.10,000/- to the Petitioners from date of petition in M.C. No. 7 of 2013.

For Petitioner : Mrs.Thulasi
For Mr.T.S.N.Prabhakaran

For Respondent : No appearance

O R D E R

This Criminal Revision case has been filed for setting aside the order in MC.No.7 of 2013 dated 27.06.2014 passed by the learned Judicial Magistrate, Sankarapuram.

2. The case of the petitioners are as follows:

The first Petitioner and the respondent are wife and husband and the second petitioner is their son. The marriage of the first petitioner and the respondent was solemnized on 06.10.2011 as per Muslim Religious rites at Athur. At that time of marriage, the first petitioner had given 20 sovereigns of gold and Rs.2,00,000/- in cash and 2 1/2 sovereigns of gold ornaments to the respondent. After marriage, the petitioner was living in



the matrimonial house. Due to the wedlock, the second petitioner was born. After the marriage, disputes and misunderstanding arose between the spouses. Therefore, the petitioners have filed a petition under Section 125 of Cr.P.C., claiming a sum of Rs.10,000/- per month for food and Rs.25,000/- per annum for maintenance, before the learned Judge, Sankarapuram in M.C.No.7 of 2013. After hearing the arguments and on a perusal of the materials, the said maintenance petition was allowed and awarded a sum of Rs.2,000/- per month to the first petitioner and Rs.1,000/- to the second petitioner as maintenance. As against the order of learned Judicial Magistrate, Sankarapuram, dated 27.06.2014, the petitioners have filed the present Revision Case before this Court for enhancement of the maintenance amount.

3. The learned counsel appearing on behalf of the petitioners submitted that the first petitioner belongs to Hindu by birth and after the marriage, she converted as Muslim. At the time of marriage, the first petitioner's parents has given 20 sovereigns of jewels and Rs.2,00,000/- cash. After the marriage, the respondent has lost everything due to addiction of alcohol. While consuming alcohol, the respondent tortured the first petitioner and thereafter, the respondent drove out her from the matrimonial home. The learned counsel further submitted that the respondent is running travel agency and besides that, he is earning a sum of Rs.5,00,000/- per annum from the agricultural land. But the petitioners are struggling to lead their day to day life. The petitioners have no means to maintain themselves. The Family Court awarded a sum of Rs.3,000/- totally to the petitioners, which is unfair. Hence, the order dated 27.06.2014 made by the learned Judge, Judicial Magistrate, Sankarapuram in M.C.No.7 of 2013 is liable to be set aside and enhance the maintenance amount.

4. Though notice has been served on the respondent, none appeared on behalf of the respondent. Name of the respondent has been printed in the causelist.

5. Heard the learned counsel for the petitioners and perused the materials available on record.

6. It is seen from the impugned order that the respondent had married one Naseema seven years back and they have three children. The first petitioner also got married to one Annamalai. After the death of the said Annamalai, the first petitioner was living in her parental home. According to the first petitioner, the marriage between the first petitioner and the respondent was arranged. According to the respondent, the marriage was forced one. Further, there is no dispute with regard to the paternity of the child. Under these circumstances,



the legal status of the first petitioner as well as the respondent has to be decided only by the competent civil forum and not by this Court. Hence, without expressing any opinion in respect of the marriage of the first petitioner with the respondent, this Court is inclined to dispose of the present revision case. However, this Court has to decide whether any justification denying the maintenance of the petitioners. In order to prove the marriage and the relationship between the the first petitioner and the respondent, she has produced the marriage certificate dated 06.10.2011 before the trial Court. Under such circumstances, the said document is sufficient to pay the maintenance in respect of the first petitioner and she is entitled to get maintenance from the respondent. The trial Court awarded a sum of Rs.2,000/- per month to the first petitioner and Rs.1,000/- to the second petitioner, which is very low as the cost of living prevailing as on date. Hence, this Court is inclined to interfere with the order passed by the learned Judicial Magistrate, Sankarapuram in MC.No.7 of 2013 dated 27.06.2014. Accordingly, the respondent is directed to pay a sum of Rs.2,500/- per month to each of the petitioners towards maintenance on or before fifth day of every English Calender month without any default. The respondent is further directed to deposit the entire arrears of maintenance as fixed by this Court, less the amount, if any, already deposited within a period of four weeks from the date of receipt of a copy of this order.

7. With the above discussion, this criminal revision case is disposed of. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Sankarapuram.
2. -do- through The Chief Judicial Magistrate,
Villupuram.

CrI.R.C. No. 905 of 2014

VBM(CO)
RLP(16/12/2021)