

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.597 of 2019 &
Crl.M.P.No.8112 of 2019 &
Crl.R.C.No.666 of 2019

K.Vijayakumar ... Petitioner in Crl.R.C.No.597 of 2019 &
Respondent in Crl.R.C.No.666 of 2019

Vs.

Gowri ... Respondent in Crl.R.C.No.597 of 2019 &
Petitioner in Crl.R.C.No.666 of 2019.

PRAYER in both Revisions: Criminal Revisions filed under 397 r/w
401 of Cr.P.C. against the order passed in F.C.M.C.No.4 of
2018, by the learned Judge, Family Court, Vellore, dated
14.05.2019.

For Petitioner in Crl.R.C.No.597 of 2019 &
Respondent in Crl.R.C.No.666 of 2019 : Mr.E.Govarthanan

For Respondent in Crl.R.C.No.597 of 2019 &
Petitioner in Crl.R.C.No.666 of 2019 : No appearance

C O M M O N O R D E R

Parties in these Revisions are husband and wife. Wife has
filed F.C.M.C.No.4 of 2018, on the file of the learned Judge,
Family Court, Vellore, seeking maintenance. The learned Judge,
by an order dated 14.05.2019, directed the husband to pay a sum
of Rs.10,000/- towards monthly maintenance. Crl.R.C.No.597 of
2019 has been filed by the husband to set-aside the order, dated
14.05.2019. Seeking enhancement of the maintenance amount from
Rs.10,000/- to Rs.50,000/-, the wife has filed the Revision in
Crl.R.C.No.666 of 2019.

2. When the matter came up for hearing this Court heard the
learned counsel and the matter was directed to be listed under
the caption "for Orders" today. Today, when the matter is
called, the learned counsel appearing for the petitioner/husband
in Crl.R.C.No.597 of 2019 is present and there is no
representation on the side of the petitioner/wife in
Crl.R.C.No.666 of 2019.

3. The case of the petitioner in Crl.R.C.No.666 of 2019/wife before the trial Court is that the marriage between her and her husband was solemnized on 03.09.1998 and the marriage was dissolved on 22.01.2013 by the order and Decree passed in H.M.O.P.No.279 of 2010, by the learned Subordinate Judge, Vellore. Challenging the order, dated 22.01.2013, the appeal preferred by the wife, the learned I Additional District and Sessions Judge, Vellore, set-aside the order passed by the learned Subordinate Judge, Vellore. However, on Appeal in C.M.S.A.No.2 of 2016 preferred by the husband, the order passed in H.M.C.M.A.No.2 of 2014, was set-aside. According to the petitioner/wife, her husband is a practising Advocate and earning Rs.1,00,000/- per month and also having property worth about Rs.4 Crores and getting rental income of Rs.50,000/- per month and prayed for maintenance.

4. It is stated in the grounds of revision by the petitioner in Crl.R.C.No.666 of 2019/wife, that since she has no sufficient means or income, she had filed a petition in F.C.M.C.No.4 of 2018, and sought monthly maintenance of Rs.50,000/-. However, the learned Judge, Vellore, ordered only a sum of Rs.10,000/- per month. Not being satisfied with the order, the wife has filed the Revision in Crl.R.C.No.666 of 2019, seeking enhancement of compensation.

5. The learned counsel appearing for the petitioner in Crl.R.C.No.597 of 2019 / husband, had challenged the order passed by the learned Judge, Family Court, Vellore in F.C.M.C.No.4 of 2019, on two grounds, viz.,

(i) The wife is working as a teacher in Narayana Mission, CBSC School, Vellore and as such, she can able to maintain herself and therefore, the petition filed under Section 125 of Cr.P.C. is not maintainable.

(ii) The wife has deserted the husband voluntarily and also obtained a Decree of Divorce on the ground of cruelty and desertion, which was also confirmed by this Court and therefore, the wife is not entitled to get maintenance from her husband.

However, the learned Judge, Family Court, Vellore, without properly appreciating the materials available on record, on sympathy, ordered a maintenance of Rs.10,000/- per month, and therefore, prays for setting aside the order.

6. Heard the learned counsel for the petitioner in Crl.R.C.No.597 of 2019 / husband and perused the petition filed by the revision petitioner in Crl.R.C.No.666 of 2019/ wife and also perused the materials available on record.

7. A careful reading of the entire records, the marriage is

not disputed and subsequently, the marriage was dissolved on 22.01.2013 by the Decree of Divorce, and the same was confirmed in C.M.S.A.No.2 of 2016, which was also not in dispute. The only dispute arises for consideration is whether the wife is an earning member and she can able to maintain herself.

8. In the petition in F.C.M.C.No.4 of 2018, the wife has claimed maintenance, but however, she has not proved that that she is unable to maintain herself, whereas, the husband has stated that his wife is working as a teacher, however, the learned Judge, has not considered the said submission on the ground that the husband had not produced any witnesses or marked documents regarding salary particulars. It is to be noted that the husband had obtained a Decree of Divorce on the ground of cruelty and desertion before the Sub Court, Vellore in H.M.O.P.No.279 of 2010. Though the Appeal filed by the wife in H.M.C.M.A.No.2 of 2014 before the I Additional District Court, Vellore was allowed on 30.04.2015, subsequently, the order passed by the appellate Court was set aside in C.M.S.A.No.2 of 2016, by an order dated 27.04.2017, by confirming Decree of Divorce on the ground of cruelty and desertion, passed by the Sub Court, Vellore in H.M.O.P.No.279 of 2019.

9. It is to be noted that even in the order passed by this Court in C.M.S.A.No.2 of 2016, this Court has observed that the wife is working as a teacher in a private school, however, it was not mentioned anything about the income. Though the husband had stated that his wife is working in the private school, Narayana CBSE School, Vellore as a teacher, no documentary evidence was produced. This Court, as a Court of record, mentioned in its order in C.M.S.A.No.2 of 2016, that the petitioner was working as a teacher in a private school. Therefore, since the petitioner is an earning member and further divorce was granted on the grounds of cruelty and desertion, she is not entitled to claim maintenance. Before ordering maintenance to the wife, the learned Judge has not considered the above facts, which warrants interference of this Court.

10. In view of the above, the order passed by the learned Judge in F.C.M.C.No.4 of 2018, dated 14.05.2019 is set aside. Accordingly, the Crl.R.C.No.597 of 2019 filed by the husband is allowed and Crl.R.C.No.666 of 2019 filed by the wife is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

r n s

To

The Family Court,
Vellore.

+2cc to Mr.V.Srikanth, Advocate, S.R.No.6269

CrI.R.C.No.597 of 2019 &
CrI.M.P.No.8112 of 2019 &
CrI.R.C.No.666 of 2019

CA(CO)
CB(16/04/2021)



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