

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.761 of 2019
and
Crl.M.P.No.10259 of 2019

1.Punitha
2.Minor Kevin Shanke
rep by her mother and Natural Guardian
1st Petitioner Punitha Petitioners

Versus

S.Kottaiyan Respondent

PRAYER: Criminal Revision petition is filed under Section 397 & 401 Cr.P.C seeking to set aside the order passed in M.C.No.13 of 2018 dated 26.4.2019 Judicial Magistrate, Ambattur.

For Petitioners : Mr.P.Vishnu
For Respondent : Mr.R.K.Arun Raj for
M/s.A.Suresh

O R D E R

This Criminal Revision Petition has been filed seeking to set aside the order passed in M.C.No.13 of 2018 dated 26.4.2019 on the file of Judicial Magistrate, Ambattur.

2. The respondent is the husband of the first petitioner and father of the second petitioner. The first petitioner and the respondent got married on 3.9.2008; out of their wedlock, second petitioner, child is born. Thereafter due to misunderstanding, the petitioners are living separately and the respondent is living separately. Therefore, the petitioners had filed the maintenance case before the learned Judicial Magistrate, Ambattur, claiming a sum of Rs.50,000/- towards the maintenance of the 1st and the 2nd petitioner per month and Rs.25,000/- as litigation expenses. The learned Magistrate, after enquiry, dismissed the petition against the first petitioner and ordered a sum of Rs.7,000/- to the second petitioner. Aggrieved by the said order, the petitioners have filed the present Revision for enhancement of the maintenance amount and also challenging the dismissal order against the first petitioner.

3. The learned counsel for the petitioners would submit that the respondent is working as Manager Operations in Media Content and Communications Services (India) Pvt.Ltd and getting a salary of Rs.1,50,000/-. Though the first petitioner was working in private concern and subsequently due to medical grounds, she quit the job now without any job, she has no income and she is struggling with her child viz., the second petitioner herein. Therefore she filed the petition pointing out that the respondent is having sufficient means and the petitioners do not have any means to maintain themselves. Therefore, they filed the petition. The learned Magistrate without considering the facts and circumstances dismissed the petition against the first petitioner and allowed Rs.7,000/- to the second petitioner. The school fees itself is more than Rs.70,000/-. Therefore, the amount ordered by the learned Magistrate is not sufficient. Therefore, the order passed against the first petitioner is liable to be set aside and prayed for awarding maintenance and also seeks for enhancement of the maintenance amount of Rs.7,000/- ordered to the second petitioner.

4. The learned counsel for the respondent would submit that the first petitioner is a qualified person and she was capable of earning more than the respondent and she was earning a sum of Rs.70,000/- per month and she suppressed the fact and she left the matrimonial home without any reason and she is not entitled to get any maintenance and he is ready to take care of the second petitioner only and the fact is that the first petitioner alone prevented the second petitioner to live with the respondent and therefore, first petitioner is not entitled to any maintenance amount.

5. Heard and perused the records.

6. The relationship of the parties are admitted and paternity of the child also not in dispute and both the petitioners and respondent are living separately also not in dispute. However according to the petitioners, though the first petitioner was working earlier but due to medical ground she has quit her job and now without any work and income and she is struggling. Further she is also carrying the responsibility of bringing the second petitioner and she requires money for livelihood and also for school fees. The respondent is said to have been working in a private concern and earning a sum of Rs.1,50,000/- per month and therefore he is liable to pay a sum of Rs.50,000/- per month for maintenance and Rs.25,000/- for litigation expenses.

7. According to the respondent, the first petitioner is capable of working and earning more than the respondent. Therefore, she is also working at the time of filing the

petition i.e., she was in employment and getting salary more than a sum of Rs.40,000/- and she has suppressed the fact. The Magistrate also rightly observed and pointed out the said fact and dismissed the petition against the first petitioner. As far as second petitioner is concerned, the respondent is ready to take care.

8. Admittedly both the husband and wife are living separately and the minor son is with the mother. Though the respondent has stated that he is not having job right now, he admitted that he has not denied the fact that he was working in the Manager Operations in Media Content and Communications Services (India) Pvt. Ltd and getting a salary of Rs.1,50,000/-. However the first petitioner has not produced any document to show that the respondent was earning a sum of Rs.1,50,000/-.

9. Considering the contentions raised on the side of the petitioners and also on the side of the respondent, though the petition for maintenance is dismissed against the first petitioner, this Court does not find any reason to interfere with the findings given against the first petitioner.

10. As far as second petitioner is concerned, only Rs.7,000/- is ordered. However, considering the cost of living prevailing as on date and also the school fees expenses which would be meted out to the petitioners, this court is of the view that Rs.7,000/- is very meager. Therefore, this Court is inclined to enhance it as Rs.10,000/- per month to the second petitioner.

11. Therefore, the Revision petition is partly allowed. As far as the second petitioner is concerned, the maintenance is enhanced from Rs.7,000/- to Rs.10,000/-. As far as the first petitioner is concerned, the Revision is dismissed. Further the respondent is directed to pay the arrears of the amount immediately within a month and make future payments every month on or before 5th of the English Calendar month, failing which, the learned Magistrate is directed to execute the order in accordance with law. Consequently, connected Crl.M.P.is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

Mpa

To

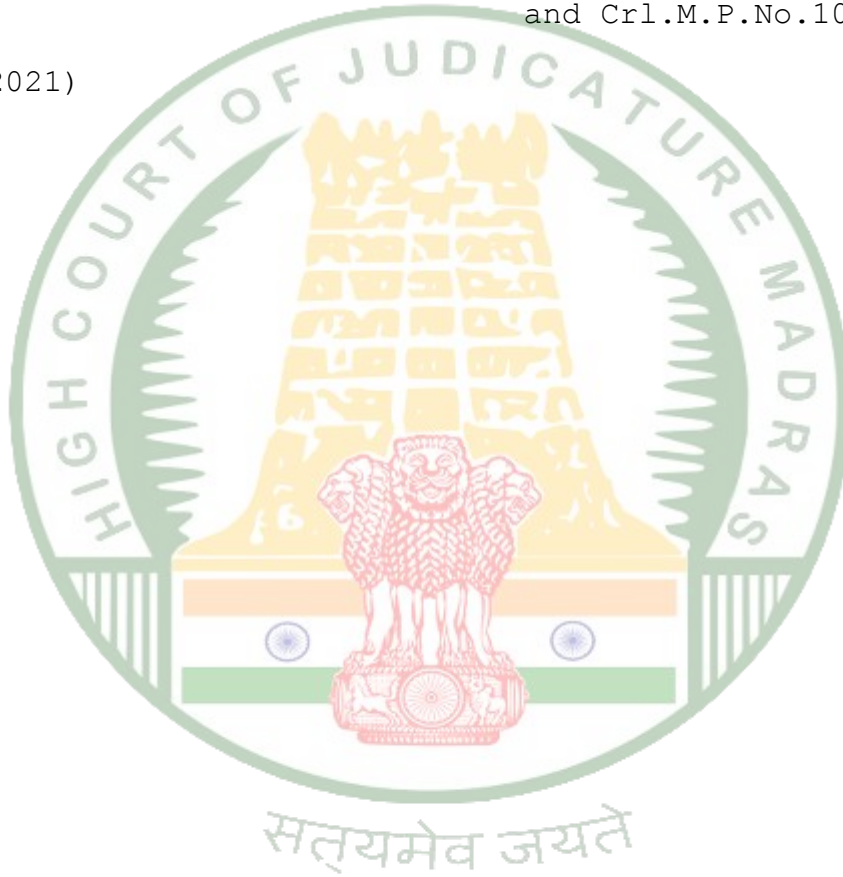
1.The Judicial Magistrate,
Ambattur.

2. Do Thro The Chief Judicial Magistrate,
Egmore, Chennai.

+1cc to Mr.A.Suresh, Advocate, S.R.No. 2941

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