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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:16.09.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Cr1.RC.No.909 of 2017

S.Punithavathi

...Petitioner

-Vs-

P.V.Pradeep

....Respondent

Prayer:This Criminal Revision Petition filed under Section 397 and 401 of Code of Criminal Procedure, to enhancement the maintenance amount awarded in the Fair and Decreetal order dated 17.02.2017 made in MC.No.108 of 2013 on the file of the learned Additional Principal Family Judge, Coimbatore.

For Petitioner : Mr.S.P.Yuvaraj

O R D E R

The Criminal Revision Case has been filed against the order dated 17.02.2017 in MC.No.108 of 2013 on the file of the learned Additional Principal Family Judge, Coimbatore.

2. It is the case of the petitioner that the petitioner is the wife and the respondent is her husband. The marriage between the petitioner and the respondent was solemnized on 07.02.2000 as per Hindu rites and customs. After marriage, the petitioner was living in the matrimonial house. After six months of the marriage, the respondent harassed the petitioner frequently. In the year 2000, the respondent got job at Singapore, for which, the entire expenses to go to Singapore was borne by the petitioner by borrowing from her parents. After joining his job, he did not send the salary to the petitioner to repay the loan amount. During the year 2008-2010, the respondent borrowed Rs.10,00,000/- from the petitioner's parents and started a business in the name of M/s.Brahvishma Engineers, later he was converted it into the name and style of M/s/Jupiter Automation at Palangarai, Avinashi Taluk. Thereafter, the respondent has not paid the said loan amount which was borrowed from the



parents of the petitioner and he has also not taken care of his wife and he had illicit relationship with one Subashini.

3. When the petitioner asked about these issues, the respondent left the matrimonial home and sent a legal notice dated 12.04.2013 to the petitioner. Thereafter, the respondent filed a divorce petition in HMOP No.520 of 2013 and the petitioner filed a petition in HMOP.No.874 of 2013 for restitution of conjugal rights before the learned Principal Family Judge, Coimbatore. During pendency of these cases, the petitioner has filed a maintenance case under Section 125 of Cr.P.C. claiming a sum of Rs.15,000/- in addition to pay a sum of Rs.50,000/- (to be paid towards various loans) and Rs.12 lakhs towards repayment of one time gold loan. After full-fledged trial, the trial Court dismissed the petition for restitution of conjugal rights and allowed the petition for divorce. Further, the trial Court directed the respondent to pay a sum of Rs.15,000/- per month to the petitioner towards maintenance. Challenging the said order of the trial Court, the present petition has been filed before this Court.

4. The learned counsel for the petitioner submitted that the respondent runs various businesses and had bought assets in his name with the help of the petitioner. During trial, the respondent himself admitted that he is earning a sum of Rs.10/- Lakhs per month. The trial Court, without considering all these facts, awarded a sum of Rs.15,000/- towards maintenance, which is very meager. Further learned counsel submitted that the trial Court failed to consider the loan amount which was borrowed by the respondent, which is unfair. The petitioner and the respondent filed appeals before this Court in CMA Nos.2788 & 2789 of 2017 against the order of the trial Court and the same are pending. The learned counsel prays this Court to interfere with the order of the trial Court and enhance the maintenance amount awarded.

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

6. Though the case is pending from the year 2017, the petitioner has not taken any steps to serve notice on the respondent. Hence, this Court is inclined to dispose of the case after going through the available records.

7. Admittedly, the petitioner filed a petition for restitution of conjugal rights and a petition for maintenance and the respondent filed a divorce petition before the Additional Family Court, Coimbatore. The learned Judge dismissed the petition for restitution of conjugal rights and allowed the petition for divorce and awarded a sum of Rs.15,000/- to the



petitioner as maintenance. The short point that is to be decided in the present petition is as to whether the petitioner is entitled to get additional award amount as claimed in the maintenance petition and it is necessary to quote the relevant portion of the order for better clarity :-

Section 125 of Cr.P.C.-

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.'

From the above said provision makes it clear that the dependent is only entitled to claim the maintenance amount from the husband and not entitled to claim any EMI amount or one time settlement from the husband. For claiming the loan amount, the petitioner has to approach the appropriate civil forum, not in the maintenance case.

8. Under these circumstances, this Court is not inclined to interfere with the order passed by the trial Court and the same is confirmed. The respondent is directed to deposit the entire arrears of maintenance within a period of two weeks from the date of receipt of a copy of this order, less the amount, if any, already deposited. Further, the respondent is directed to continue to pay the maintenance awarded by the trial Court to



the petitioner on or before 5th day of every English Calender month, without any default.

9. In the result, this Criminal Revision Case is dismissed.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Additional Principal Family Judge,
Coimbatore.

Copy to:

The Section Officer,
Criminal Section,
High Court,
Madras.

+1cc to Mr.S.P.Yuvaraj, Advocate Sr No.47163

Cr1.RC.No.909 of 2017

PPA (CO)
PR (18/10/2021)