



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.R.C.NO.956 OF 2017

AND

CRL.M.P.NO.8905 OF 2017

J.Rajendran

... Petitioner

.Vs.

K.B.Indira

... Respondent

PRAYER:-

Petition filed under Section 397 and 401 of Cr.P.C., seeking to set aside the order passed by the learned Judicial Magistrate, Ootacamund made in M.C.No.17 of 1998 dated 27.09.2016 in C.M.P.No.5641 of 2015 on the file of Judicial Magistrate, Ootacamund and the same is liable to be set aside.

For Petitioner : Mr.M.N.Balakrishnan

For Respondent : Mr.V.Srikanth

O R D E R

This petition has been filed seeking to set aside the order dated 27.09.2016, passed by the learned Judicial Magistrate, Udhagamandalam in C.M.P.No.5641 of 2015.

2. The case of the petitioner is that the petitioner and the respondent are husband and wife and their marriage was solemnized on 08.04.1990 and they were blessed with one son. Since there was no compatibility between them, the petitioner filed petition seeking divorce in O.P.No.7 of 1997 before the Sub-Court, Udhagamandalam and the said petition was dismissed on 15.06.1998. Since the respondent was not able to maintain herself, she filed petition under Section 125 of Cr.P.C. seeking maintenance in M.C.No.17 of 1998 before the learned Judicial Magistrate at Udhagamandalam and a sum of Rs.500/- each, per month, was awarded as maintenance to the respondent and the son.



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3. It is the further case of the petitioner that thereafter, the respondent filed M.C.No.1 of 2007 before the learned Judicial Magistrate at Udhagamandalam seeking enhancement of the maintenance amount and after adjudication, the maintenance amount was enhanced to a sum of Rs.2000/- per month in respect of the respondent alone. Thereafter, again the respondent filed C.M.P.No.5641 of 2015 before the learned Judicial Magistrate at Udhagamandalam seeking to enhance the maintenance amount as Rs.15,000/- per month and after adjudication, the amount was enhanced to a sum of Rs.12,000/- per month. Aggrieved by the same, the petitioner has filed this revision.

4. The learned counsel appearing for the petitioner submitted that the respondent is a house wife, however, the son attained the age of majority and has started earning sufficient income and he is capable of maintaining himself and his mother and hence, the amount awarded by the lower Court is exorbitant one. Accordingly, he prayed for allowing the revision.

5. The learned counsel appearing for the respondent submitted that the petitioner is a retired employee of the Tamil Nadu Electricity Board and it is the duty cast upon him to maintain his legally wedded wife. Accordingly, he prayed for dismissal of the revision.

6. Heard the submissions made on either side and perused the materials placed on record.

7. The relationship between the petitioner and the respondent is not disputed. Thrice petition was filed for maintenance and enhancement of maintenance and the maintenance stood enhanced from Rs.500/- to Rs.2000/- and thereafter to Rs.12,000/-. There is no dispute that the petitioner was all along paying maintenance to his wife and only when the maintenance stood increased to Rs.12,000/-, he has come before this Court seeking intervention. The ground taken by the petitioner for refraining to pay maintenance to his wife being that his son has since started earning and his wife, being with his son and being maintained by him, there is no necessity for him to pay maintenance, much less, the enhanced maintenance as ordered by the court below.

8. It is borne out by record that the petitioner was employed in Tamil Nadu Electricity Board and has since retired. The petitioner, at this point of time, is receiving pension to the tune of about Rs.30,000/-. It is to be pointed out that the respondent is still the wedded wife of the petitioner and the petitioner is duty bound to maintain her. In spite of the fact that the petitioner's son is employed as of now and that the respondent is with her son, a duty is cast upon the petitioner



to maintain his wife. The petitioner cannot shirk his responsibility to maintain his wife, wherever she be, so long as she is the legally wedded wife of the petitioner. Therefore, the court below directing payment of maintenance to the respondent to be paid by the petitioner cannot be found fault with only on the yardstick that the son of the petitioner is employed and is maintaining the respondent.

9. Coming to the quantum of maintenance awarded by the trial court, it is evident from the records that the maintenance was initially ordered at Rs.500/-, which was enhanced to Rs.2000/- and, thereafter, to Rs.12,000/-. It is not in dispute that the petitioner is retired and is receiving pension to the tune of about Rs.30,000/-. The cost of living is to be the index for the purpose of deciding the quantum of maintenance. It is to be pointed out that the cost of living in the present day scenario is spiralling upwards to such an extent that to maintain a person, a sum of Rs.12,000/- cannot be said to be exorbitant. Further, it is to be pointed out that the respondent would also be a senior citizen and with increase in age, the ailments that she would be suffering cannot also be lost sight of, for which she would be requiring to shell out towards medical expenses and medicines. In such a backdrop, the enhancement of maintenance to Rs.12,000/- cannot be said to be high. The amount earned by the petitioner's son from his avocation cannot form the basis for fixation of maintenance for the respondent.

10. The court below has taken into consideration all the aforesaid aspects and has awarded maintenance at Rs.12,000/-, though claim was made for Rs.15,000/-. The said amount, by no stretch could be termed to be exorbitant or unreasonable and this Court finds no reason to interfere with the award of maintenance as orders by the court below.

11. For the reasons aforesaid, this Court is not inclined to interfere with the order passed by the court below and, accordingly, this revision is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Ootacamund.

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+1cc to Mr.M.N.Balakrishnan, Advocate, S.R.No.39386

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