

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.NO.1454 OF 2019

AND

CRL.M.P.NO.18590 OF 2019

Sivakumar

... Petitioner/Respondent

.Vs.

1. Jothimani

2. Minor Dharnish ... Respondents/Petitioners

(2nd Minor Respondent represented by
next friend and mother, first petitioner)

PRAYER :

Criminal Revision case filed under Sections 397 r/w 401 of Cr.P.C. to set aside the order dated 15.11.2019 passed in Crl.M.P.No.4315 of 2019 in M.C.No.04 of 2010, on the file of Judicial Magistrate No.I, Udumalpet and to allow the above Criminal Revision.

For Petitioner : Ms.V.Revathy
for Mr.R.Nalliyappan

For Respondents : No appearance

O R D E R

This Criminal Revision has been filed challenging the order dated 15.11.2019 passed in Crl.M.P.No.4315 of 2019 in M.C.No.04 of 2010 on the file of Judicial Magistrate No.I, Udumalpet.

2. Initially, the respondents filed maintenance case in M.C.No.9 of 2006 in which a sum of Rs.2,000/- were ordered to each of the respondents, as against which the petitioner filed C.R.P.No.92 of 2007 before the learned Additional District & Sessions Judge, Special Court for E.C.Act Cases, Coimbatore and the said petition was ordered by modifying the maintenance amount in respect of the second respondent from Rs.2,000/- to Rs.1,500/- and confirming the maintenance in respect of the first respondent. Subsequently, the respondents filed another

M.C.No.4 of 2010 for enhancement of maintenance amount from Rs.2,000/- to Rs.5,000/- to the first respondent and a sum of Rs.1,500/- to Rs.5,000/- to the second respondent and the said petition is pending. During the pendency of the said case, the respondents filed a petition in Crl.M.P.No.4315/2019 to amend the enhancement amount sought for in the Maintenance case from Rs.5,000/- to Rs.8,000/- to the first respondent and from Rs.5,000/- to Rs.8,000/- to the second respondent. The said petition was allowed by the learned Magistrate No.I, Udumalpet vide order dated 15.11.2019. Challenging the said order passed in Crl.M.P.No.4315 of 2019, the petitioner has filed the present revision.

2.The learned counsel for the petitioner would submit that initially the petitioner filed the divorce petition in H.M.O.P.No.31 of 2004 and the said petition was decreed and the divorce was granted and therefore, the prayer sought for in the amendment petition is not maintainable, but the learned Magistrate failed to consider the same and allowed the amendment petition. He would further submit that there is no provision to amend the application filed under Section 125 Cr.PC. and therefore the amendment petition is not maintainable and hence prays to set aside the order passed by the learned Magistrate.

3.Heard the learned counsel for the petitioner. Perused the records.

4.Admittedly, the petitioner is the husband, the first respondent is the wife and the second respondent is the minor son. The respondents initially filed a case for maintenance in M.C.No.9 of 2006, in which the learned Magistrate ordered a sum of Rs.2,000/- to each of the petitioners as maintenance, as against which the petitioner filed C.R.P.No.92 of 2007, before the learned Additional District & Sessions Judge, Special Court for E.C.Act Cases, Coimbatore and the said petition was ordered by modifying the maintenance amount in respect of the second respondent from Rs.2,000/- to Rs.1,500/- and confirming the maintenance in respect of the first respondent. Subsequently, the respondents filed Maintenance case for enhancement of maintenance amount and the said case was taken on file in M.C.No.4/2010. During the pendency of the same, the petitioner therein filed the Miscellaneous Petition in Crl.M.P.No.4315 of 2019 for amending the enhancement amount sought for in M.C.No.4 of 2010 from Rs.5,000/- to Rs.8,000/- to the first respondent herein and from Rs.5,000/- to Rs.10,000/- to the second respondent herein. The Court below rightly observed that allowing the amendment application would not change the nature and character of the main petition has rightly allowed the petition for amending the prayer. This Court also feels that the issue whether the respondents herein are entitled for

maintenance or not is the matter to be decided in main M.C.No.4 of 2010 . In view of the same, this Court does not find perversity in the order passed by the learned Magistrate and hence the same is liable to be dismissed.

5. Accordingly, this Criminal Revision is dismissed. However, since the Maintenance Case is pending from 2010, the learned Magistrate is directed to dispose of the Maintenance Case in M.C.No.4 of 2010, within a period of three months from today, on merits and in accordance with law, without any further delay. It is made clear that no further extension of time can be entertained. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

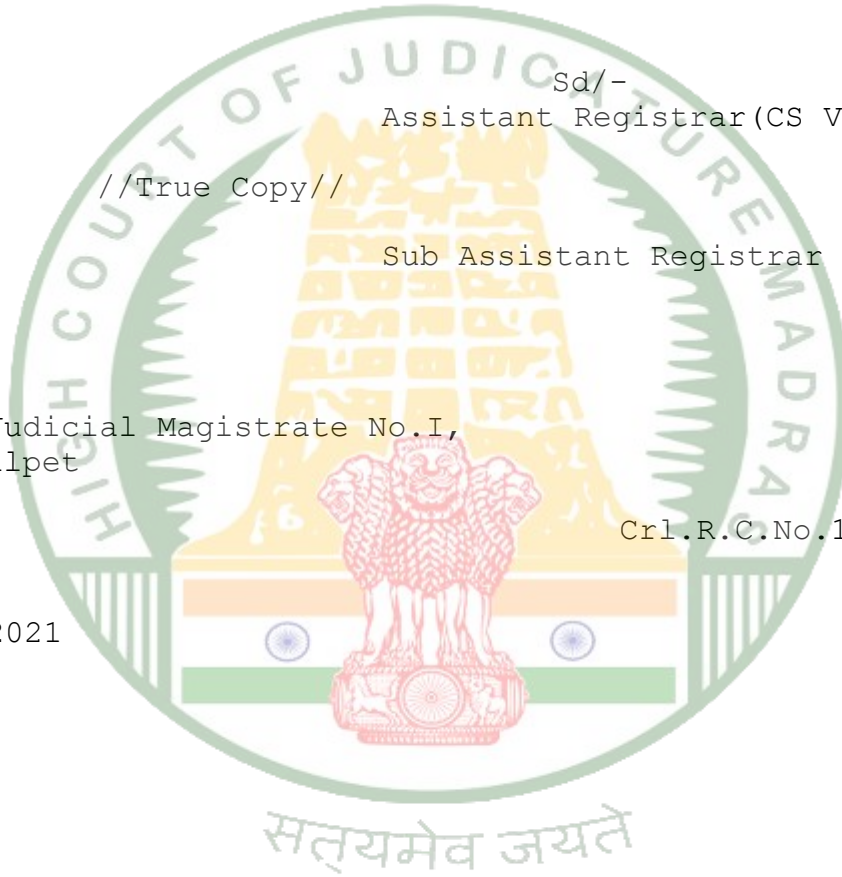
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To

The Judicial Magistrate No.I,
Udumalpet

Crl.R.C.No.1454 of 2019

SMI (CO)
CS/19/03/2021



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