



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 16.03.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

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CrI. R.C. (MD)No.668 of 2020

1.Seethalakshmi

2.Minor Nitheesh Kumar

(Minor represented by his mother and natural guardian, the first petitioner herein) .. Petitioners

Vs.

Shankar Dhayalan

.. Respondent

Prayer : This criminal revision case is filed under Sections 397 r/w. 401 of Cr.P.C., to call for the records relating to the impugned order dated 15.04.2016 made in Cr.R.P.No.22 of 2015 on the file of the V Additional District Judge, Madurai modifying the order dated 12.01.2015 in M.C.No.4 of 2007 on the file of the learned Judicial Magistrate, Melur and to set aside the same as illegal and consequently restore the order dated 12.01.2015 made in M.C.No.4 of 2007 on the file of the learned Judicial Magistrate, Melur.

For Petitioner : Mr.V.Sasikumar
For Respondents : Mr.G.Kannan

ORDER

This petition has been filed to set aside the order passed in Cr.R.P.No.22 of 2015 dated 15.04.2016, on the file of the learned V Additional District Judge, Madurai.

2.The first petitioner is the wife and the second petitioner is the minor son. The respondent is the husband of the first petitioner. The petitioners have filed a petition in M.C.No.4 of 2007 before the learned Judicial Magistrate, Melur for a relief of maintenance from the respondent. The learned Judicial Magistrate, Melur directed the respondent to pay a sum of Rs.5,000/- (Rupees Five Thousand only) to each of the petitioners. Against which, the respondent has preferred a revision in Cr.R.P.No.22 of 2015 before the V Additional District Judge, Madurai and the learned District Judge partly allowed the petition with a direction to the respondent to pay a sum of Rs.1,500/- (Rupees One Thousand and Five Hundred only) for each of the petitioners as interim relief. Against that order, the petitioners have filed this revision.

3. On the side of the petitioners, it is stated that the



respondent is working as a Supervisor in the Tasmac shop. He is also associated with the bar and he is earning more than Rs.20,000/- (Rupees Twenty Thousand only) per month. He is having a house at Thiruchunai and another house at Karunkalakudi and he is having nanja and punja lands. Without considering the evidence of the petitioners and the respondent, the learned V Additional District Judge has modified the order. The maintenance case was filed in the year 2007, the order was passed in the year 2015 and prayed the order to be set aside.

4. On the side of the respondent, it is stated that the first petitioner is a graduate and she is doing tailoring business and earning Rs.4,000/- (Rupees Four Thousand only) per month. The respondent is earning Rs.2,400/- (Rupees Two Thousand and Four Hundred only) per month. The respondent is not having any movable or immovable properties. The wife has not filed any document to prove the income of the respondent and prayed the petition to be dismissed.

5. A perusal of the records reveals that the husband has admitted the marriage. It is seen that the DNA test was conducted and it was proved that the respondent is the father of the second petitioner. There is no doubt the respondent has to take care of wife and son. Regarding the income of the respondent, it is true that the first petitioner has not filed any document to prove the income. So also the respondent has failed to prove the income of the first petitioner. It is stated that the respondent produced the salary certificate before the learned V Additional District Judge, Madurai wherein the consolidated pay was mentioned as Rs.5,200/- (Rupees Five Thousand and Two Hundred only), after deduction. The revision petitioner in his cross examination has admitted that he is having landed properties.

6. It is seen that after getting an ex parte order in the divorce petition, the respondent has got second marriage. The case was filed by the petitioners in the year 2007. The maintenance was ordered on 12.01.2015. The V Additional District Court has passed an order on 15.04.2016. There is no use in remanding the matter back to the lower Court. The case is for maintenance and a relief has to be given to the petitioners as soon as possible.

7. In the above circumstances, considering the income of the respondent and considering the present day of cost of income, this Court ordered the respondent to pay a sum of Rs.5,000/- (Rupees Five Thousand only) as maintenance for the second petitioner and Rs.2,500/- (Rupees Two Thousand and Five Hundred only) towards maintenance of the first petitioner.

8. In view of the above, the order passed in Cr.R.P.No.22 of 2015 dated 15.04.2016, on the file of the learned V Additional



District Judge, Madurai is set aside. Accordingly, this Criminal Revision Case is allowed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The V Additional District Judge, Madurai.

2.The Judicial Magistrate, Melur.

+1 CC to M/s.V.SASIKUMAR, Advocate (SR-11774[F] dated 17/03/2021)

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SVN(CO)

KB(24.03.2021) 3P 4C