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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	31.03.2021
DELIVERED ON	05/05/21

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

Crl.RC(MD)No. 753 of 2016
and Crl.M.P(MD) No. 10774 of 2016

J. Meena ...Revision petitioner/Petitioner

Vs.

N. Jayachandran ...Respondent/Respondent

PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records and set side the order dated 01.09.2016 passed by the Family Court, in M.C. No. 107 of 2014 and allow the petition filed by the petitioner in M.C.No.107 of 2014 2014 seeking for enhancement of maintenance.

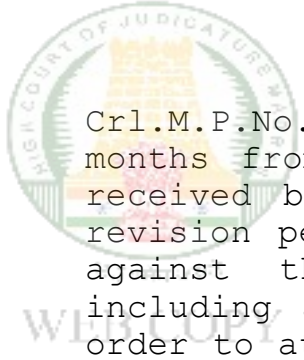
For Petitioner : Mr.J. Maria Roseline

For Respondent : M/s. N. Thuja for
Mr.K. Neelamegam Devaraj

O R D E R

This Criminal Revision Case has been filed by the revision petitioner to set side the order, dated 01.09.2016 passed by the Family Court, in M.C.No.107 of 2014 .

2. The revision petitioner herein is wife of the respondent herein. The revision petitioner has filed a petition in M.C. No. 20 of 2005 on the file of the learned Chief Judicial Magistrate, Trichy. Though, the respondent/husband has received Court notice in the said maintenance petition, he has not chosen to appear before the Court below and the learned Chief Judicial Magistrate, Trichy has passed an award on 12.05.2005 directing the respondent to pay a sum of Rs.1,500/-as maintenance to the petitioner and the same shall be paid on or before 10th day of every English Calendar month from the date of petition. After passing the above order in M.C.No.20 of 2005, the revision petitioner has filed a petition for claiming arrears of maintenance amount for a sum of Rs.18,000/-in



Crl.M.P.No.1362 of 2006 against the respondent for a period of 12 months from 01.03.2005 to 28.02.2006 and a sum of Rs.18,000/-was received by the petitioner through the Court below. Again, the revision petitioner has filed a petition in Crl.M.P.No.408 of 2013 against the respondent for claiming recovery of maintenance including arrears of maintenance. The Court below has passed an order to attach the salary of the respondent through his garnishee. The garnishee of respondent deducting a sum of Rs.7,700/-from the salary of the respondent and same was remitted to the petition through cheque from the Court below. Thereafter, the petitioner has filed a petition under Section in Crl.M.P.No.107 of 2014 on the file of the learned Judge, Family Court, Trichy, to enhance the monthly maintenance amount from Rs.1500/- to Rs.7,150/- and direct the respondent to pay the same to the petitioner every month from the date of filing the petition the same was dismissed on 01.09.2016. Aggrieved over the same, the revision petitioner/wife is before this Court.

3. The learned counsel appearing for the revision petitioner/wife submitted that the learned Judge, Family Court taking into account the proceeds from sale of house plot as a ground for declining enhancement of maintenance is not sustainable either in facts or in law. She further submitted that the petitioner was deserted by the respondent from 1988 and she alone only raised her two daughters and one son without any physical and financial support of the respondent/husband. She further submitted that the Family Court ought to have seen that but for a meager sum of Rs.60,000/- which the respondent has paid to the petitioner and her children in M.C. No. 2 of 1998, the respondent had not contributed anything towards the welfare of the petitioner and her children. She further submitted that the Family Court had wrongfully failed to exercise its jurisdiction eventhough the petitioner had made out a case under Section 127 of Cr.P.C. Hence, she prays to allow this revision case.

4. The learned counsel appearing for the respondent/husband submitted that the revision petitioner has filed a petition for maintenance in M.C No.2 of 1998 before the learned Judicial Magistrate-V, Trichy for herself and her minor children. In the meantime, the respondent/husband has settled the matter and paid a sum of Rs.60,000/-in the year 1999. The petitioner/wife agreed the same and received the aforesaid amount. Accordingly, the petitioner/wife has filed a memo and the matter has been settled out of Court and prayed for the dismissal of the M.C No.2 of 1998. Based on the memo filed by the petitioner, the learned Magistrate has dismissed the MC No.2 of 1998 on 11.01.1999. He further submitted that the petitioner has filed another petition in M.C.No.20 of 2005 seeking maintenance by suppressing the earlier proceedings and obtained an exparte order. He further submitted that the revision petitioner is not entitled for any maintenance as against the respondent since she has suppressed the earlier legal proceedings which has been settled out of Court and the petitioner



has also filed a memo to that effect. Hence, he prays to dismiss this revision case.

5. Heard the learned Counsel appearing for the petitioner/husband and the learned counsel appearing for the respondent/wife and perused the material documents available on record.

6. The revision petitioner has filed this Criminal revision case against the dismissal order, dated 01.09.2016 in M.C.No.107 of 2014 passed by the learned Judge, Family Court, Trichy.

7. The revision petitioner has filed a petition in M.C.No.107 of 2014 seeking maintenance on the file of the learned Judge, Family Court, Trichy. An exparte order was passed in M.C.No.107 of 2014 in favour of the revision petitioner and a sum of Rs.1500/-was ordered as maintenance. Already, she had filed a petition in M.C. No. 2 of 1998, seeking maintenance, on the file of the learned Judicial Magistrate-V, Trichy. A memo was filed in M.C. No. 2 of 1998 as Rs.1,500/-each of the petitioner (this petitioner and three children) was deposited in their name as settled out of Court. On perusal of the said memo, nowhere stated that it was one time or full settlement. After that only the revision petitioner has filed another maintenance petition in M.C. No. 20 of 2005 the same was allowed as exparte. As per order in M.C. No. 20 of 2005 the respondent has paid a sum of Rs.1,500/-p.m., to the petitioner. After lapse of nine years, the revision petitioner has filed a petition in M.C. No. 107 of 2014 under Section 127 of Cr.P.C to enhance the maintenance amount. The said petition was dismissed since the petitioner sold a property for worth of Rs.10 lakhs and also she is working as Home Guard.

8. But the learned Judge, Family Court, Trichy, has not considered that the three children are under the custody of their mother/ petitioner. Since the petitioner is a guardian of their children she has to maintain the education and marriage of the children etc. Further, there is no permanent income to the petitioner by way of Home guard. Her age was also 53 years in the year 2015. After nine years only, she has filed this petition to enhance the maintenance amount. Now, cost of living is also very high. Considering the facts and circumstances and also considering the present cost of living, this Court is inclined to order Rs.3,000/-per month, as maintenance to the petitioner.

9. Finally, this Criminal Revision Case is partly allowed and the order, dated 01.09.2016 in M.C. No. 107 of 2014, passed by the learned Judge, Family Court, Trichy, is hereby set aside. The respondent/husband is directed to pay a sum of Rs.3,000/-to the



petitioner, on or before 10th day of every English Calendar month, from the date of this Criminal Revision case. Consequently, connected miscellaneous petition is also closed.

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Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 Judge, Family Court, Trichy.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
3. The Section Officer, Criminal Records Section,
Madurai Bench of Madras High Court,
Madurai. (2Copies)

Order made in
Cr1.RC(MD) No. 753 of 2016

05.05.2021

CN(02.06.2021) 3P C5