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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.04.2021

Pronounced on : 30.07.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.R.C. (MD)Nos.169 and 193 of 2017

Crl.R.C. (MD)No.169 of 2017:-

1.C.Pramila

2.Minor Bhobisha ... Petitioners/Petitioners
(Minor daughter is represented through natural guardian and her mother first petitioner)

Vs.

S.Ganesh Babu ... Respondent/Respondent

Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C, to set aside the order passed in M.C.No.9 of 2015 on the file of the Family Court, Srivilliputtur dated 18.10.2016 by enhancing the maintenance amount of Rs.25,000/- and directing the respondent to pay the same from the date of maintenance application.

For Petitioners : Mr.C.Vakeeswaran

For Respondent : Mr.L.Shaji Chellan

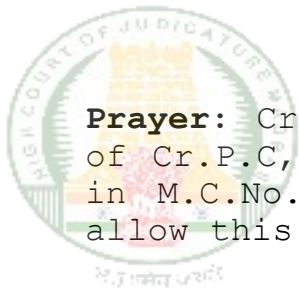
Crl.R.C. (MD)No.193 of 2017:-

S.Ganesh Babu ... Petitioner/Respondent

Vs.

1.C.Pramila

2.Bhobisha ... Respondents/Petitioners
(R2 declared as major vide order dated 16.03.2020 in Crl.M.P. (MD)No.2616 of 2020 in Crl.R.C. (MD)No.193 of 2017)



Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C, to call for records of the Family Court, Srivilliputtur in M.C.No.9 of 2015 dated 18.10.2016 and set aside the same and allow this Criminal Revision Case.

For Petitioner : Mr.L.Shaji Chellan

For Respondents : Mr.C.Vakeeswaran for R1

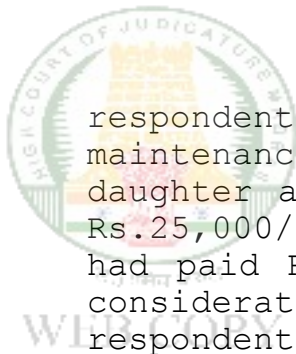
No appearance for R2

C O M M O N O R D E R

Crl.R.C.(MD)No.169 of 2017 is filed by the wife seeking enhancement of the maintenance that was ordered by the learned Family Court, Srivilliputhur in M.C.No.9 of 2015 on the file of the Family Court, Srivilliputtur. Crl.R.C.(MD)No.193 of 2017 is filed by the husband seeking to set aside the maintenance that was ordered by the learned Family Court, Srivilliputhur M.C.No.9 of 2015.

2.The learned counsel for the petitioner in Crl.R.C.(MD)No.193 of 2017 submitted that the wife filed maintenance case at Srivilliputhur as though she was residing at Srivilliputhur. Actually, she is residing at Coimbatore with her brothers. Her brothers are not married and they are earning and supporting her. Also she herself joined in a private organization and earning Rs.25,000/- per month. The Court below had not considered those facts and passed the order as though she is depending on the respondent/husband and also seeking indulgence of this Court to consider the fact that the husband had filed H.M.O.P.No.627 of 2014 before the Family Court at Coimbatore and obtained decree of divorce against the wife on 22.02.2018. Subsequent to the grant of decree of divorce, the husband had contracted second marriage and married a divorcee, who is having 16 years old son. He has to maintain his wife and aged mother, who is bedridden. Therefore, he is unable to part with Rs.25,000/- per month as ordered by the Family Court, Srivilliputhur in M.C.No.9 of 2015. The Family Court, Srivilliputhur ordered Rs.10,000/- for the daughter and Rs.15,000/- for the wife. Only by clubbing Rs.10,000 with Rs.15,000/-, the husband was directed to pay a sum of Rs.25,000/- as maintenance to the daughter and wife. After the decree of divorce, the daughter having been joined the father, for which, the mother had protested and the father had obtained transfer certificate after filing Writ Petition before the Principal Seat of this Court and the daughter is with the father at Srivilliputhur.

3.Therefore, the father is maintaining the daughter and she had completed degree and she had obtained a job on her own. Also the



respondent/husband submits that during the pendency of the maintenance case, he had been paying maintenance to the wife and daughter according to his earning capacity. At times, he had paid Rs.25,000/- and at times, he had paid Rs.15,000/- and at times, he had paid Rs.10,000/-. Therefore, the same had not been taken into consideration by the learned Family Court, Srivilliputhur. So the respondent/husband filed Crl.R.C.(MD)No.193 of 2017 seeking to modify the order passed by the Family Court, Srivilliputtur, in M.C.No.9 of 2015.

4.The wife/Pramila had filed Crl.R.C.(MD)No.167 of 2017 seeking enhancement of the maintenance amount, that the husband is earning Rs.60,000/- per month and she had proved it through her evidence . It is the contention of the husband that wife is now employed and she is also supported by her brothers, who are unmarried and employed. It is his contention that the brothers are the cause of matrimonial dispute, who had instigated the wife/Pramila to lodge false case against the husband to harass him. She was not willing to join him. Earlier, he filed a petition for divorce in the year 2011. Subsequently, there had been a compromise arrived between them and she offered to join. Therefore, he had withdrawn the petition for divorce filed in the year 2011. After withdrawal of the same, instead of joining with him, she had lodged a false case for dowry harassment against the respondent/husband. Therefore, on the ground of desertion, she had filed H.M.O.P.No.627 of 2014 before the Family Court, Coimbatore and on appreciation of evidence, the learned Family Court, Coimbatore had granted decree of divorce on the ground of desertion and cruelty. The respondent/husband offers to pay a sum of Rs.5,000/- per month regularly till he is capable of paying.

5.The points for consideration in these Criminal Revision Cases are as follows:-

''(i) Whether Crl.R.C.(MD)No.169 of 2017 filed by the wife seeking enhancement of the maintenance award by the Family Court in M.C.No.9 of 2015 dated 18.10.2016 is to be allowed? and

Whether Crl.R.C.(MD)No.193 of 2017 filed by the husband seeking to set aside of the order passed in M.C.No.9 of 2015 on the file of the Family Court, Srivilliputhur, dated 18.10.2016 is to be allowed??''

6.Considering the present Covid lockdown crisis, he seeks modification of the order passed by the learned Family Court, Srivilliputhur and the change of status that the daughter had joined him at Madurai. Considering the rival submissions of the husband, who is the petitioner in Crl.R.C.(MD)No.193 of 2017 and the wife, who is the petitioner in Crl.R.C.(MD)No.169 of 2017, this Court modifies the order accordingly.



7.The amount already paid to the wife had been recorded by the learned counsel for the husband in Crl.R.C.(MD)No.193 of 2017 by a calculation memo dated 10.03.2021.

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8.Considering the lockdown and its resultant impact on the common man, the request of the husband to modify the maintenance amount subsequent to the filing of Crl.R.C.(MD)No.193 of 2017 is found justified. When the daughter had attained majority, she is gainfully employed and she is with the father, the amount regarding Rs.10,000/- per month need not be considered. If the daughter is supported from the father and she is not gainfully employed, she can approach the court concerned for enforcing the order of maintenance allowed to her.

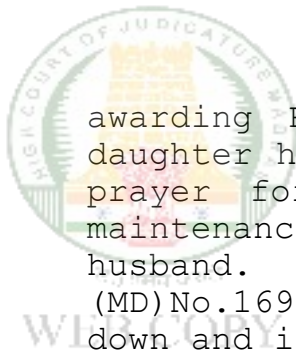
9.Regarding the prayer for enhancement sought by the wife/Pramila in Crl.R.C.(MD)No.169 of 2017 is rejected as the learned Trial Judge had reasonably fixed the amount for the wife at Rs.15,000/- per month. Considering the fact that the husband had obtained divorce and contracted second marriage and considering the fact that he has to support his family and aged mother, the claim for enhancement of maintenance amount by the wife is found unacceptable.

10.The reasoning given by the learned Judge, Family Court, Srivilliputhur in awarding Rs.15,000/- as maintenance to the wife/Pramila and Rs.10,000/- to the daughter/Bhobisha is found reasonable and acceptable, considering the social status of the husband and wife and the earning capacity of the husband. Therefore, enhancement sought by the wife is rejected.

11.The modification sought by the husband regarding the order of the learned Judge, Family Court, Srivilliputhur, in awarding Rs.15,000/- for the wife is upheld and it does mean any modification regarding the payment of Rs.10,000/- to the daughter is cancelled, because the daughter had joined the father. As per his contentions and the proof of filing of writ petition seeking transfer certificate from the college. Therefore, the amount of Rs.10,000/- is reduced from the date of filing of Crl.R.C.(MD) No.193 of 2017. Till such time, the daughter is entitled to maintenance of Rs.10,000/- per month.

12.In the light of the above discussions, the point for consideration in Crl.R.C.(MD)No.193 of 2017 is answered in favour the revision petitioner/husband and the point for consideration in Crl.R.C.(MD)No.169 of 2017 is answered against the revision petitioner/wife.

13.In the result Crl.R.C.(MD)No.193 of 2017 is partly allowed. <https://hccresonline.gov.in/services/> by the learned Judge, Family Court, Srivilliputhur,



awarding Rs.10,000/- to the daughter alone is modified, as the daughter had joined the father as stated in paragraph 8 above. The prayer for reducing the amount of Rs.15,000/- to the wife as maintenance is rejected, considering the earning capacity of the husband. The petition seeking enhancement by the wife in Crl.R.C. (MD)No.169 of 2017 is dismissed, considering the present Covid lock down and its impact on the respondent/husband.

Sd/-

Assistant Registrar (CS I)

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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 Family Court,
Srivilliputtur.

2.The Family Court,
Coimbatore.

Copy to

The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.

+2CC to Mr. L.Shaji Chellan,Advocate(SR.No.24636)

+2CC to Mr. C.Vakeeswaran,Advocate(SR.No.24613)

Crl.R.C. (MD)Nos.169 and 193 of 2017
30.07.2021

MGJ(06.08.2021) 5P 9C