



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.02.2021

Pronounced on : 01.03.2021

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.R.C. (MD) .No.461 of 2017

and

CrI.M.P. (MD) No.4986 of 2017

P.Thangamani : Petitioner / Respondent
Vs.

Palaniammal : Respondent/Petitioner

PRAYER: Criminal Revision Petition has been filed under Section 397 and 401 of Cr.P.C, to set aside the order passed in M.C.No.50 of 2013, dated 18.02.2014 on the file of the learned Chief Judicial Magistrate, Tiruchirappalli against the petitioner.

For Petitioner : Mr. C.Vakeeswaran

For Respondent : Mr.A.Thiruvadikumar

ORDER

The Criminal Revision Case is directed against the order passed in M.C.No.50 of 2013, dated 18.02.2014, on the file of the Court of Chief Judicial Magistrate, Tiruchirappalli.

2. It is not in dispute that originally the Court of the Judicial Magistrate No.IV, Tiruchirappalli has granted orders for maintenance, directing the revision petitioner to pay Rs.200/- to the respondent herein and Rs.100/- to the son of the respondent and the petitioner, that subsequently in M.C.No.34 of 1998 maintenance amount was enhanced to Rs.300/- per month to the respondent and Rs.250/- per month to her son and that thereafter, in M.C.No.135 of 2013, the learned Chief Judicial Magistrate, Tiruchirappalli, vide order dated 01.02.2005, has enhanced maintenance amount to Rs.500/- to the respondent as well as her minor son.

3. It is also not in dispute that the son of the petitioner and respondent had attained majority. The respondent alone has filed a petition in M.C.No.50 of 2013 under Section 127 of Cr.P.C, seeking orders to enhance the maintenance amount from Rs.500/- to Rs.5000/- per month. Since the petitioner herein had remained ex-parte, the learned Chief Judicial Magistrate, after conducting enquiry, has passed the impugned order on 18.02.2014, enhancing



the maintenance amount from Rs.500/- to Rs.5000/-. Aggrieved by the said order of enhancement, the petitioner/husband has come forward with the present revision.

4. Whether the impugned order, dated 18.02.2014, passed in M.C.No.50 of 2013, on the file of the Chief Judicial Magistrate, Tiruchirappalli, is liable to be set aside? is the point for consideration.

5. The learned counsel for the revision petitioner would contend that the learned Chief Judicial Magistrate ought not to have entertained another separate application for maintenance, that the trial Judge ought to have considered the age of the petitioner before passing the ex-parte order for maintenance, that the trial Court has also failed to consider that the son of the petitioner and the respondent is earning a sum of Rs.15,000/- per month and he is living with the respondent and that he is liable to maintain his father and mother, that the petitioner is working as daily coolie and he is very much struggling for his own life, that the petitioner ought to have been given one more opportunity to hear the petitioner's side and that granting of maintenance at Rs.5000/- as sought for by the respondent is not maintainable and is also excessive.

6. The learned Chief Judicial Magistrate in his order has specifically observed that despite the service of Court notice, the petitioner herein has not chosen to enter into appearance and as he was called absent, he was set ex-parte. Since the petitioner has himself remained ex-parte, the present contention that the trial Court ought to have given one more opportunity to hear his side is devoid of merit and the same is liable for rejection.

7. It is further evident from the records that the respondent has only filed a petition for enhancement of compensation under Section 127 of Cr.P.C, but the same has been numbered as Miscellaneous case and not as Criminal Miscellaneous Petition. Hence, the contention of the revision petitioner that the learned Magistrate ought not to have entertained another separate petition for maintenance is not correct, as the respondent has not filed any separate or fresh application claiming maintenance.

8. No doubt, though the respondent has alleged that the petitioner is a landlord and is getting yearly income at Rs.3,00,000/-, she has not produced any evidence to substantiate the same. According to the petitioner, he is working as daily coolie and is very much struggling for his own life at the age of 62 years and that he could not be able to pay such huge amount as monthly maintenance. As already pointed out, since the son of the



added as respondent. The respondent has claimed enhancement at Rs.5000/- and the trial Court has granted the entire amount sought for by the respondent.

9.No doubt, as rightly observed by the trial Court, the petitioner had remained ex-parte. But at the same time, considering the entire facts and circumstances, status of the parties, the age of the petitioner and the present economic scenario, this Court is of the view that enhancing of the maintenance amount from Rs.500/- to Rs.5000/- is definitely on higher side and the same is liable to be reduced to Rs.3000/- per month. Hence, this Court decides that the respondent is entitled to get Rs.3000/- per month as maintenance from the date of revision and on considering the other facts and circumstances of the case, this court further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.

10.In the result, the Criminal Revision case is partly allowed and the maintenance amount enhanced at Rs.5000/- per month is reduced to Rs.3000/- per month and the revision petitioner is directed to pay monthly maintenance at Rs.3000/- (Rupees Three Thousand Only) from the date of revision. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

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Sub Assistant Registrar(CS)

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To

1.The Chief Judicial Magistrate, Tiruchirappalli.

2.The Section Officer, Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai(2 copies).

+1 CC to M/s.C.VAKEESWARAN, Advocate SR-8128[F] dated 02/03/2021

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sss(CO)

TR(08.03.2021) 3P 5C

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