



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.02.2021

Pronounced on : 22.03.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C. (MD) .No.550 of 2017

V.Umarani

: Petitioner/Petitioner

Vs.

K.S.Vaidyanathan

: Respondent / Respondent

PRAYER : Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records from the trial Court pertaining to the order passed by the learned Additional Chief Judicial Magistrate, Madurai in M.C.No.33 of 2012, dated 18.06.2013 fixing a sum of Rs.2,000/- towards maintenance of the petitioner and enhance the same and fix a sum of Rs.10,000/- per month as maintenance to the petitioner by allowing this revision.

For Petitioner : Mr.S.Senthil Sakaranatha Kumar

For Respondent : Mr.M.Kannan

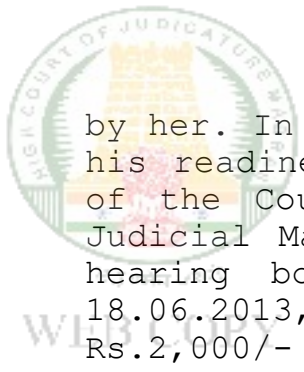
ORDER

The Criminal Revision Case is directed against the order passed in M.C.No.33 of 2012, dated 18.06.2013 on the file of the learned Additional Chief Judicial Magistrate of Madurai.

2.It is not in dispute that the marriage between the revision petitioner and the respondent was solemnized on 09.07.1997, that due to their wed-lock, a male child by name Madhesh was born to them on 13.11.1998 and that subsequently, there arose misunderstanding between them and they are living separately.

3.It is also not in dispute that the respondent has filed a petition in H.M.O.P.No.169 of 2005 claiming divorce, that the revision petitioner has filed a petition in H.M.O.P. No.90 of 2007 claiming the relief of restitution of conjugal rights, that the Family Court has passed a common Judgment, dated 15.11.2011, dismissing the divorce petition filed by the husband and allowed the petition filed by the wife granting the relief of restitution of conjugal rights.

4.It is also not in dispute that the revision petitioner, by invoking the provisions of Domestic Violence Act, has filed a case in M.C.No.2 of 2008, on the file of the Court of Judicial Magistrate No.VI, Madurai and that after enquiry, the learned Magistrate has passed an order on 08.09.2009, granting residence order. Thereafter, the revision petitioner, by invoking Section 125 of Cr.P.C, has filed the case in M.C.33 of 2012, claiming monthly maintenance at Rs.10,000/-. The respondent has filed the counter statement, disputing the liability and also the quantum of maintenance claimed



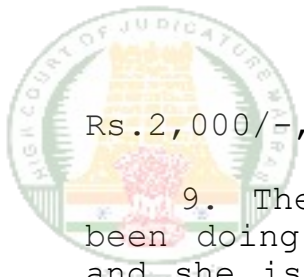
by her. In the last paragraph of the counter statement, he expressed his readiness to pay at Rs.1,000/- per month and sought permission of the Court to pay the said sum. The learned Additional Chief Judicial Magistrate, Madurai, upon considering the evidence and on hearing both the sides, has passed the impugned order, dated 18.06.2013, directing the respondent to pay monthly maintenance at Rs.2,000/- to the revision petitioner from the date of petition. Aggrieved by the quantum of maintenance amount fixed by the trial Court, the wife has come forward with the present revision, seeking enhancement.

5. Whether the quantum of maintenance amount fixed by the learned Additional Chief Judicial Magistrate, Madurai in M.C.No.33 of 2012, dated 18.06.2013, is liable to be enhanced ? is the point for consideration.

6. As already pointed out, the competent Court has already dismissed the divorce petition filed by the respondent and allowed the petition for restitution of conjugal rights filed by the wife. It is the specific case of the revision petitioner that despite the specific order was passed for restitution of conjugal rights, the respondent has not chosen to live with the revision petitioner.

7. It is not the specific case of the respondent that after granting of the decree for restitution of conjugal rights, he has attempted to comply with the said order, but the same was thwarted by the revision petitioner/wife. As rightly contended by the learned counsel for the revision petitioner, since the competent Subordinate Court has already granted the relief of restitution of conjugal rights and that the same was not complied with, the present contention of the respondent that the petitioner alone had neglected and refused to live with the respondent cannot be entertained and the same is liable for rejection. More over, the respondent has not taken any proceedings challenging the finding of the trial Court that the respondent is liable to pay maintenance to the revision petitioner.

8. Now coming to the quantum of maintenance, as already pointed out, the trial Court has awarded monthly maintenance at Rs.2,000/- to the revision petitioner from the date of petition. It is the specific case of the revision petitioner that the respondent has been working as Music Teacher in a Government High School, at Puzhuthipatti, Sivagangai District and is drawing monthly salary at Rs.20,000/- and he is also earning a sum of Rs.20,000/- from private music tuitions and taking part in an orchestra, that since the revision petitioner was suffering from uterus disease and as per the advice of their Doctor, she removed her uterus and underwent surgery by spending nearly Rs.50,000/- towards medical expenses and that though the revision petitioner has claimed Rs.10,000/- monthly maintenance, the trial Court has fixed the monthly maintenance at



Rs.2,000/-, which is very much low.

9. The defence of the respondent is that the petitioner has been doing hand crafting and embroidery work and also sewing work and she is earning Rs.3,000/- per month, that the respondent alone has been maintaining their son and is giving good education to him, that the respondent is only getting the salary of Rs.11,741/- and after deduction, he is getting net salary at Rs.10,000/- only, that the respondent has to take care of his aged mother also and that therefore, the maintenance amount fixed at Rs.2,000/- is very much proper and the same does not warrant any interference. No doubt, the respondent has produced his salary certificate for the month of February 2012, issued by the Headmaster, Government Higher Secondary School, Puzhuthipatti as Ex.R.1 and whereunder, it is shown that the respondent is getting Gross salary of Rs.16,259/- and after deductions of Rs.2,348/-, is getting net salary of Rs.13,911/-. It is pertinent to mention that the son of the revision petitioner and the respondent is under the care and custody of the respondent. Though the revision petitioner has alleged that the respondent is also earning Rs.20,000/- through his private tuition and his participation in the orchestra, she has not produced any evidence to substantiate the same.

10. Considering the above facts and circumstances and also the status of the parties and also the current economic situation, this Court is of the view that monthly maintenance awarded at Rs.2,000/- is on lower side and the same is to be increased to Rs.3,000/- per month from the date of revision. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.

11. In the result, this Criminal Revision case is partly allowed and the monthly maintenance awarded to the revision petitioner by the Additional Chief Judicial Magistrate, Madurai is enhanced from Rs.2,000/- to Rs.3,000/- payable from the date of revision. Parties are directed to bear their own costs.

Sd/-

Assistant Registrar (CSIII)

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Sub Assistant Registrar(CS)



TO

1.The Additional Chief Judicial Magistrate,
Madurai.

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

+1 CC to M/s.M.KANNAN, Advocate (SR-13180[F] dated 24/03/2021)

CRL.R.C. (MD) .No.550 of 2017
22.03.2021

SSS (CO)
KB (29.03.2021) 4P 5C