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Crl.R.C.No.179 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.179 of 2021 and
Crl.M.P.No.4271 of 2021

S.Anandanatesan

...Petitioner

-Vs-

P.Hemalatha

...Respondent

Prayer: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C. to call for the records in Criminal Appeal No.53 of 2016 on the file of the II Additional District and Sessions Court, Chidambaram, dated 03.08.2019 against Maintenance Case No.4 of 2010 on the file of the District Munsif cum Judicial Magistrate Court, Parangipettai, dated 02.02.2016 and set aside the same.

For Petitioner : Mr.P.Venugopal

For Respondent : M/s.J.Sasilie

ORDER

The petitioner is husband and respondent is wife. The respondent/wife filed a case in M.C.No.4 of 2010 under Section 12 of Protection of Women



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from Domestic Violence Act, 2005 (in short “the Act”), seeking reliefs under Section 18, 19, 20 and 22 of the Act. The learned District Munsif-cum-Judicial Magistrate, Parangipettai, after hearing both the parties, by an order dated 02.02.2016, found that there is no domestic violence caused by the petitioner and hence rejected the reliefs sought for by the respondent/wife but however granted Rs.3,000/- to the minor female child as monthly maintenance. Aggrieved over the said order of the learned Magistrate, the respondent/wife has preferred an appeal in C.A.No.53 of 2016. The learned II Additional District and Sessions Judge, Chidambaram, by judgment dated 03.08.2019, even though confirmed the findings of the learned Magistrate that there is no domestic caused by the petitioner/husband, increased the maintenance to Rs.5000/-, against which present revision is filed by the husband.

2 Learned counsel appearing for the petitioner/husband contended that the learned Magistrate given a finding that the respondent/wife has not proved the domestic violence alleged to have been caused by the petitioner/husband and hence rejected the claim of the



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respondent/wife, however, granted Rs.3,000/- as maintenance to the minor female child. The learned II Additional District and Sessions Judge, Chidambaram, even though confirmed the findings of the learned Magistrate that the domestic violence caused by the petitioner/husband is not proved by the respondent/wife, but, however, without giving any reason, enhanced the maintenance from Rs.3,000/- to Rs.5,000/-, which warrants interference of this Court.

3 Learned counsel appearing for the respondent/husband would submit that the learned Magistrate after appreciating all the evidences on record, granted maintenance Rs.3000/- to the child, which is very meager and hence the respondent/wife preferred an appeal and the learned II Additional District and Sessions Judge, Chidambaram, after re-appreciating entire materials, rightly enhanced the maintenance to Rs.5000/, which is very reasonable and the same does not call for any interference and this revision is liable to be dismissed.

4 Heard the learned counsel appearing for the petitioner/husband



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and the learned counsel appearing for the respondent/wife and perused the materials available on record.

5 A careful perusal of the order passed by both the Courts below reveal that the learned Magistrate, based on the evidence and the materials, found that the respondent/wife has not proved the domestic violence caused by the petitioner/husband, however awarded Rs.3000/- as maintenance to the child. The learned II Additional District and Sessions Judge, Chidambaram, in the appeal filed by the respondent/wife even though confirmed the findings of the learned Magistrate, enhanced the maintenance to Rs.5000/- without even giving any specific reason or findings.

6 It is settled proposition of law that the wife is entitled to get maintenance, if she is unable to maintain herself, invoking Section 125 Cr.P.C. and during pendency of the divorce petition also she can claim interim maintenance or she can claim permanent alimony under Section 25 of the Hindu Marriage Act, 1955. Leaving all the above, if the wife seeks maintenance under the Act, it is the duty of the wife to prove the domestic



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violence caused by the husband, whereas in this case, the Magistrate given a finding that there is no domestic violence and the learned II Additional District and Sessions Judge, Chidambaram, even though confirmed the findings of the learned Magistrate, without giving any valid reason or findings, enhanced the maintenance. The wife has not even filed any revision or cross objections against the adverse findings made by both the Courts below against her.

7 Under these circumstances, this revision is allowed and the judgment of the learned II Additional District and Sessions Judge, Chidambaram, in Criminal Appeal No.53 of 2016 dated 03.08.2019 is set aside. Consequently connected miscellaneous petition is closed. However the respondent/wife is at liberty to workout her remedy in the manner known to law.

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Index : Yes/No
Speaking Order/Non Speaking Order
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P.VELMURUGAN, J.,
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To

1. The II Additional District and Sessions Judge, Chidambaram.
2. The District Munsif-cum-Judicial Magistrate, Parangipettai.

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