



WEB COPY



Crl.R.C.Nos.777 & 800 of 2021
& 118 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.Nos.777 and 800 of 2021
and 118 of 2020

Premnath	..	Petitioner in all RCs
Vs		
P.Umadevi	..	Respondent in all RCs

Prayer in Crl.R.C.No.777 of 2021: Criminal Revision Case filed under Section 397 read with 401 Cr.P.C, to set aside the order made in M.P.No.423 of 2019 in M.P.No.296 of 2021 in M.c.No.509 of 2011 dated 11.10.2021 by learned V Additional Family Court, Chennai.

Prayer in Crl.R.C.No.800 of 2021: Criminal Revision Case filed under Section 397 read with 401 Cr.P.C, to set aside the order made in M.P.No.1140 of 2019 in M.C.No.509 of 2011 dated 11.10.2021 by learned V Additional Family Court, Chennai directing the petitioner to pay Rs.3,000/- towards maintenance.

Prayer in Crl.R.C.No.118 of 2020: Criminal Revision Case filed under Section 397 read with 401 Cr.P.C, to set aside the order made in M.P.No.1037 of 2018 in M.C.No.509 of 2011 dated 19.11.2019 by learned III Additional Family Court, Chennai directing the respondent to pay Rs.7,000/- towards maintenance.



Crl.R.C.Nos.777 & 800 of 2021
& 118 of 2020

WEB COPY

For the Petitioner : Mrs.Sudharshana Sunder

For the Respondent : Mr.D.Nandagopal

COMMON ORDER

There are three revisions in the present case.

2. The Crl.R.C.No.118 of 2020 is filed by the husband, aggrieved by the order of the learned III Additional Family court, Chennai, dated 19.11.2019 in M.P.No.1037 of 2018 in M.C.No.509 of 2011, whereby, the prayer of the respondent wife was partly allowed and the maintenance which was earlier ordered as Rs.3,000/- per month, was increased to Rs.6,000/- per month. Thereafter, in the year 2019, the husband filed M.P.No.1140 of 2019 to vary the maintenance under Section 127(2) of the Cr.P.C., stating that subsequently now, by way of tailoring business, the wife is earning more than him and therefore, the maintenance should be varied / canceled. The said application came to be dismissed on 11.10.2021 as against which the Crl.RC.No.800 of 2021 is filed. Since the husband did not pay the arrears, an application was filed for payment of arrears in which by an order dated 11.10.2021 in M.P.No.423 of 2021, the learned III



Crl.R.C.Nos.777 & 800 of 2021
& 118 of 2020

Additional Family court ordered issue of warrant for arrest as against the petitioner. Aggrieved by the same, the Crl.R.C.No.777 of 2021 is filed.

3. Heard *Mrs.Sudharshana Sunder*, learned counsel for the petitioner and *Mr.D.Nandagopal*, learned counsel for the respondent.

4. Learned counsel for the petitioner would submit that as far as the first revision regarding enhancement is concerned, there was no proof given by the wife that he was still continuing the work in Indian Oil Corporation as an electrician. On the other hand, the petitioner husband has proved that he had lost the job on account of the earlier execution of the warrant and since he is facing five different cases, he is not also able to go for work as electrician and he was only able to go for work for ten days in a month and can only earn Rs.5,000/- and therefore, according to the petitioner, fixing of the said sum of Rs.6,000/- is beyond the capacity of the petitioner and is without any proof of the income of the petitioner.

5. As far as Crl.R.C.No.800 of 2021 is concerned, she would submit that the petition is filed to vary the maintenance, stating that the wife of the



Crl.R.C.Nos.777 & 800 of 2021
& 118 of 2020

WEB COPY

petitioner subsequently has been earning by a well established tailoring unit and therefore, without even calling for an affidavit from both sides as mandated by the Hon'ble Supreme Court of India in ***Rajnesh vs Neha***¹, the Trial Court decided the same by believing the version of the wife and therefore, she would submit that the said order has to be set aside. As far as the Crl.R.C.No.777 of 2021 is concerned, she would submit that the said warrant was issued during the pandemic period without giving an opportunity and without hearing and is causing grave prejudice and therefore, the above revision is to be considered.

6. Per contra, *Mr.D.Nandagopal*, learned counsel for the respondent would submit that in this case, the barest minimum of Rs.6,000/- is only ordered and one can easily imagine in a place like Chennai, where the parties are living, it could even take the minimum of Rs.15,000-20,000/- to eke out a livelihood. Therefore, he would submit that the enhancement of the maintenance from Rs.3,000/- to Rs.6,000/- is very well justified and even having minimum salary of Rs,500/- per day for an electrician, still the petitioner could pay a sum of Rs.6,000/-. As far as the Crl.R.C.No.800 of 2021, learned counsel would submit that it is for the petitioner to prove his

¹ (2021) 2 SCC 324
<https://www.mhc.tn.gov.in/judis>



Crl.R.C.Nos.777 & 800 of 2021
& 118 of 2020

WEB COPY

case by bringing forth appropriate materials on record about the income of the wife, if she is earning highly so as to sustain herself. In the absence of the proof, the Trial court has rightly dismissed the application and since this is an application for enhancement / varying of maintenance, the mandate of the Supreme Court in ***Rajnesh vs Neha***¹ is not applicable. Therefore, the Family court is right in not insisting upon the same and decided the matter on merits.

7. As far as the third revision in Crl.R.C.No.777 of 2021 is concerned, firstly it is against the interlocutory order of issuing warrant and therefore, the revision itself is not maintainable. When he has not paid the arrears, it is justified that the learned Family Court has issued a warrant and therefore, he would pray that all the three revisions be dismissed.

8. I have considered the rival submissions made on behalf of both the sides and perused the material records of this case.

9. Firstly, as far as the enhancement of the maintenance is concerned, it can be seen that the sum of Rs.6,000/- is only ordered. Parties are living in

¹ (2021) 2 SCC 324
<https://www.mhc.tn.gov.in/judis>



Crl.R.C.Nos.777 & 800 of 2021
& 118 of 2020

Chennai. Even as per the petitioner, he is an electrician getting an intermittent job, therefore, considering the nature and circumstances and the background of the parties, I am of the view that no exception can be taken to the order of the learned Family Court in enhancing the maintenance from Rs.3,000/- to Rs.6,000/- and accordingly, I see no merit in Crl.R.C.No.118 of 2020 and hence the same shall stand dismissed.

10. As far as the revision in Crl.R.C.No.800 of 2021 is concerned, even though the petitioner has not filed any proof, and even though as contended by learned counsel for the respondent, the Hon'ble Supreme Court's mandate of the filing of the affidavit is not expressly applicable to an application for variance of maintenance also but, however, considering the pleadings of the parties, in this case, I am of the view that one opportunity can be given for both sides to categorically place the income of their own by filing an affidavit so that the Trial court can decide the same in accordance with law. Therefore, in view of the above, the order of the learned V Additional Family Court, Chennai dated 11.10.2021 in M.P.No.1140 of 2019 is set aside and the M.P.No.1140 of 2019 is restored to the file of the V Additional Family Court, Chennai to be disposed of



Crl.R.C.Nos.777 & 800 of 2021
& 118 of 2020

afresh on merits, after calling for affidavit of assets from both parties as directed by the Hon'ble Supreme Court in ***Rajnesh vs Neha***¹, and in any event, the Trial Court shall complete the said exercise within a period of three months from the date of receipt of copy of this order.

11. As far as the Crl.R.C.No.777 of 2021 is concerned, even though the petitioner pleaded hardship and improper notice , I do not see any error in the order. In view of the above, this revision is disposed of as follows:

i. The petitioner is granted four weeks time from the date of receipt of copy of this order to pay all the arrears, being Rs.1,72,000/-, failing which, the Trial Court can proceed to execute the warrant as issued in the said M.P.No.423 of 2019. There will be no order as to costs.

Index : yes/no
Speaking/Non-speaking order
drm

23.06.2022



Crl.R.C.Nos.777 & 800 of 2021
& 118 of 2020

To
WEB COPY

1. The V Additional Family Court, Chennai
2. The III Additional Family Court, Chennai
3. The Public Prosecutor
High Court of Madras.



WEB COPY



Crl.R.C.Nos.777 & 800 of 2021
& 118 of 2020

D.BHARATHA CHAKRAVARTHY, J.

drm

Crl.R.C.Nos.777 and 800 of 2021
and 118 of 2020

23.06.2022