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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05/04/2022
CORAM:
THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)Nos.20565 and 20849 of 2018
and
Crl.MP(MD)No.9507 and 9634 of 2018

(1)Crl.OP(MD)No.20565 of 2018:-

K.Mathiyalagan : Petitioner

Vs.

1.K.Praveena
2.Minor K.P.Thulasidharan
rep by his mother and natural
guardian K.Praveena/1st respondent
herein : Respondents

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records of the Additional Sessions Judge, Karur, in Crl.RC No.18 of 2018 by his order, dated 18/05/2018 by which dismissing the above said criminal revision and enhancing the order of maintenance passed by the Chief Judicial Magistrate, Karur, in MC No.11 of 2017 by its order, dated 29/12/2017 and set aside the same

For Petitioner : Mr.S.Deenadhayalan
For Respondents : Mrs.S.Prabha

(2)Crl.OP(MD)No.20849 of 2018:-

K.Mathiyalagan : Petitioner

Vs.

1.K.Praveena
2.Minor K.P.Thulasidharan
rep by his mother and natural
guardian K.Praveena/1st respondent
herein : Respondents

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records of the Additional Sessions Judge, Karur, in Crl.RC No.4 of 2018 by his order, dated 18/05/2018 by which allowing the above said criminal revision and enhancing the order of maintenance passed by the Chief Judicial Magistrate, Karur, in MC No.11 of 2017 by its order, dated 29/12/2017 and set aside the same

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For Petitioner : Mr.S.Deenadhayalan

For Respondents : Mrs.S.Prabha

COMMON ORDER

These criminal original petitions are filed to call for the records of the Additional Sessions Judge, Karur, in Crl.RC No.4 of 2018 & Crl.RC No.18 of 2018 by his order, dated 18/05/2018 by which dismissing the Crl.RC No.18 of 2018 and allowing Crl.RC No.4 of 2018 and enhancing the order of maintenance passed by the Chief Judicial Magistrate, Karur, in MC No.11 of 2017 by its order, dated 29/12/2017 and set aside the same.

2.**The case in brief**:-

The marriage between the petitioner and the first respondent took place, on 18/11/2012 as per the customary rites. Even at the time of marriage, the first respondent was provided with sufficient sridhana, house hold articles, apart from seervarisai. After the marriage, they were living at Kathalapatti. A child was born, who is the second respondent, on 18/10/2014. Right from the date of marriage, there was difference of opinion between them. At the time of marriage, the petitioner was working in the Tamil Nadu Electricity Board as 'Junior Engineer'. Later, he got transferred to Velliyanai. At that time, they were living as a joint family along with the sister of the petitioner and parents. At that time, she was harassed and ill-treated. Later put up a separate residence. At that time, the petitioner did not provide sufficient maintenance. When that was objected, she was driven out of the house. Over which, one complaint has been given before the Velliyanai police station and they advised them to live jointly. Thereafter also, the petitioner did not cooperate. So again, a complaint was given on 24/06/2014. He also filed a petition before this court seeking police protection. In the meantime, he also filed HMOP No.253 of 2016 before the Sub Court, Karur for restitution of conjugal rights. During the conciliation process, they advised them to live together. Even though the petitioner accepted the same, later failed. With these allegations, she filed a petition seeking maintenance amount of Rs.15,000/- for herself and Rs.12,000/- for the child.

3.That petition was resisted by the petitioner on the ground that right from the marriage, the first respondent did not cooperate properly and indulged in making trouble to the family members and abused the relatives also. She also started living with her parental home in spite of repeated panchayat. After some time, they started living together at Kathalapatti. The first respondent insisted the petitioner not to visit the parents and his sister. So also made a threat. She also lodged several complaints taking

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advantage of the fact that her relatives are working in the Police Department. On 06/11/2016, she left the matrimonial home making quarrel. She filed HMOP No.253 of 2016 for restitution of conjugal rights. During that proceedings, she gave an undertaking that she will résumé the matrimonial life. So, it was posted to 07/02/2017. After that, she was living jointly for sometime. Even after the above said proceedings, the first respondent did not change her attitude. Again started making trouble, so also started giving complaints to the higher officials against the petitioner. Against which, one departmental proceedings has been initiated. DVP No.12 of 2017 was also initiated and it is also stated to be pending. Even in that petition also, she sought maintenance. In that petition, she has impleaded the parents as well as the sisters of the petitioner. The first respondent is an educated and earning a sum of Rs.25,000/- by taking private tuition. So during the enquiry process before the trial court, on the side of the first respondent, she was examined as PW2 and six documents were marked. On the side of the petitioner, he was examined himself as RW1 and marked five documents. After completion of recording of the evidence and going through the materials on record, the trial court directed the petitioner to pay a sum of Rs.2,500/- each, per month to the respondents. Against which, he has also filed revision before the Additional District Judge, Karur, which was also taken in CRP No.18 of 2018. Seeking enhancement, the respondents filed CRP No.4 of 2018 before the Additional District Judge, Karur Both the matters were heard together and final order was passed, by directing the petitioner to pay a sum of Rs.7,000/- each to the respondents, which means the maintenance amount originally fixed by the trial court was enhanced to Rs.7,000/- per month. CRP No.18 of 2018 was also dismissed with a direction in view of the enhancement of the maintenance amount. Against which, both these criminal original petitions are filed by the petitioner.

4.Heard both sides.

5.An attempt was made during the course of proceedings to settle the issue. So the matter was referred to mediation, but it could not be settled, because of difference of opinion between the parties. So the matter is to be decided on merits.

6.At the out set, it is contended that these two criminal original petitions are not at all maintainable. This amounts to second revision. Already the revision choice has been exercised by the petitioner before the Additional District Judge, Karur and that was negatived. So the question of entertaining second revision may not lie. But however, since the enhancement has been passed by the revisional court, these two petitions came to filed and it got to be disposed on merits.

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7.As mentioned above, it appears that because of the petty issue between the petitioner and the first respondent, the matrimonial life has underwent trouble. Even during the course of HMOP No.253 of 2016, which was filed by the petitioner seeking restitution of conjugal rights did not yield permanent result. According to the petitioner, during the above said proceedings, undertaking was given by the first respondent namely the wife to resume the matrimonial life and that went only for few days. Again the wife started giving trouble. At whose fault, the matrimonial life went into trouble need not be a matter for consideration by this court, since there is a concurrent finding by the trial court as well as the revisional court regarding that issue. But the fact remains that after the dismissal of the above said HMOP No.253 of 2016, they are living separately. It is also seen that the wife was also initiated proceedings under the provisions of Domestic Violence Act before the concerned jurisdictional Magistrate court and in that proceedings, she has also initiated maintenance proceedings. So, it appears that trouble has gone out of control and there is no possibility of resumption or cohabitation in the immediate future.

8.In the light of the above said factual scenario, the only point, which arises for consideration is whether the amount of maintenance, that was awarded by the trial court, as enhanced by the revisional court is proper or not?

9.It is not in dispute that the petitioner is working in the Tamil Nadu Electricity Board and he was earning sufficient salary also. Regarding the income namely the monthly salary, no sufficient document is available. The petitioner ought to have produced the salary certificate before the trial court or the revisional court, but he did not take care. But during the course of evidence, he has stated that he received Rs.30,000/- per month, after deduction and the father of the petitioner also receiving pension after retirement. The trial court took into account the fact that the petitioner obtained loan for the purpose of construction of the house and so, he has to discharge the same. Only on that ground, Rs.7,000/- each per month towards maintenance was ordered. As per the settled proposition of maintenance jurisprudence, the husband has to share 50% of the earning to his wife for maintenance. Here, the wife and the child is also available. Taking into the above said fact only, the revisional court enhanced the maintenance amount to Rs.7,000/- per head.

10.Absolutely, I find no reason to differ from the above said view. It is also in the evidence to the effect that the first respondent is not having permanent source for her own, either by salary or drawing income from the properties. In the absence of any such evidence, I find that the enhancement that was passed by the revisional court does not suffer from any irregularity. So it requires no interference at the hands of this court.

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11.In the result, these criminal original petitions are **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(AS)

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/ /2022

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 Additional Sessions Judge,
Karur.

2.The Chief Judicial Magistrate,
Karur.

+1 CC to M/s.S. PRABHA, Advocate (SR-16787[F] dated 06/04/2022)

+1 CC to M/s.S. DEENADHAYALAN, Advocate (SR-17356[F] dated 07/04/2022)

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NSN(CO)
TR(13.06.2022) 5P 5C

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