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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 04/11/2022

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The Hon'ble Mr. Justice **G. ILANGO VAN**

Cr1.RC(MD)Nos.937 of 2019 and 276 of 2020
and
Cr1.MP(MD)No.11162 of 2019

(1)Cr1.RC(MD)No.937 of 2019:-

Jeyakumar : Petitioner/Respondent

Vs.

- 1.Maria Nancy Raina
- 2.Minor J.Hasia
- 3.Minor Heran

(Respondents 2 and 3 are minors
and next friend and natural
guardian, the 1st respondent
herein)

: Respondent/Respondent

Prayer:- This Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code against the judgment, dated 30/09/2019 made in MC No.11 of 2019 on the file of the Family Court, Kanyakumari @ Nagercoil.

For Petitioner : Mr.J.C.Rathnvel Pandian

For Respondent : Mr.S.C.Herold Singh



(2) Cr1.OP(MD)No.276 of 2020:-

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1.Maria Nancy Raina
2.J.Hasia
3.Heran

:Petitioners/Petitioners
1 to 3

Vs.

Jeyakumar

: Respondent/Respondent

Prayer: This Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code, to call for the records relating to the common order passed in MC No.11 of 2019, dated 30/09/2019 on the file of the Family Court, Kanyakumari at Nagercoil and allowed this revision by enhancing the maintenance amount.

For Petitioners : Mr.S.C.Herold Singh

For Respondent : Mr.J.C.Rathnvel Pandian

O R D E R

Cr1.RC(MD)No.937 of 2019 has been filed by the husband against the order, dated 30/09/2019 passed in MC No.11 of 2019 on the file of the Family Court, Kanyakumari @ Nagercoil, whereas **Cr1.RC(MD)No.276 of 2020** has been filed by the wife seeking enhancement of maintenance amount.

**2. Facts in brief:-**

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It is a matrimonial issue. The marriage between the parties is not disputed. It took place, on 04/09/1997 as per the parties customary rites. At the time of marriage, the husband was employed as a Casual Labour in Chennai Airport. After the marriage, the wife was taken to Chennai. A female child by name Hasia was born, on 25/06/1998 and the second child by name Heran was born, on 29/10/2006. Later, the husband was transferred to Thiruvananthapuram Airport, on 08/09/2008. At that time, the family was kept in Neendakarai A East Village.

3. It is the allegation on the part of the husband to the effect that taking advantage of his night duty, his wife developed illegal intimacy with one Suthan in the year 2014. Because of that, there was a continuous trouble between the husband and wife. The efforts taken by the husband to correct the behavior of the wife does not yield any result. Even though, a police complaint has been given by the husband, did not yield any result, since they were directed to live together. Later, the wife filed MC No.18 of 2017 before the Chief Judicial



Magistrate, Nagercoil. An *ex-parte* order was passed in that matter. The husband paid a portion of the amount. He has also filed WP(MD)No.15785 of 2018 seeking some reliefs. With these allegations, he challenged and resisted the maintenance petition, that was filed by the wife.

4.Now, it is the turn of the wife to make counter allegation against the husband. She has stated that her husband developed some illegal intimacy with one Theopara and he started neglecting the family. So, she left the matrimonial home, on 09/06/2015 and thereafter also, there was no change in the attitude of her husband. But she was permitted to live in the above said house situated at Neendakarai A Village. But he failed to maintain the family. Later, her husband sold the above said house, on 17/03/2016, over which, a suit in O.S No.246 of 2016 was filed by the wife. For about five years, the husband is neglecting the family. So she filed a maintenance petition claiming Rs.15,000/- as maintenance for herself and Rs.10,000/- each, for her two children.



5. In the meantime, the husband also filed IDOP No.316 of 2018 before the Family Court, seeking divorce. The maintenance petition, that was filed by the wife before the Chief Judicial Magistrate was allowed to transfer to the Family Court, after its constitution at Nagercoil. The Family Court Judge, on going through the entire materials available on record and calculating the earning capacity and the salary of the husband, passed an order as noted above.

6. Now challenging the above said order of awarding maintenance, the husband filed CrI.RC(MD)No.937 of 2019 disputing the liability to pay the maintenance amount to the wife on the ground of cruelty, desertion, adultery, etc.

7. Similarly, the wife also filed CrI.RC(MD)No.276 of 2020 seeking enhancement of maintenance amount on the ground that the husband is earning more money, over what is stated by him in the salary slip.

8. Heard both sides.



9.The marriage between the parties is not disputed. As usual, there is an allegation and counter allegation against each other.

10.It is the allegation of the wife to the effect that the husband is having illegal intimacy with one girl by name Theopara. It is the counter allegation by the husband to the effect that his wife is having illegal intimacy with some other person and in spite of his warning, that was not discontinued. Seeking divorce, IDOP No.316 of 2018 has been filed by the husband and it was dismissed. Even though, the ground of desertion and adultery has been raised by the husband, that was not proved before the concerned trial court. So on that ground, IDOP No.316 of 2018 was also dismissed by the Family Court. Whether any CMA has been preferred against the above said order or not, is not clear on record.

11.Now whatever it may be, reading of the order shows that during the course of his evidence, the husband was dare enough to say that he is unwilling to take the wife to the matrimonial home. So far as the children is concerned, he is ready to maintain them. This portion of



adamant evidence before the trial court itself is sufficient enough to award maintenance against him.

12. Now, the point of consideration is whether there was any desertion on the part of the wife legally and whether she is living in adultery.

13. With regard to the allegation of adultery, the trial court has observed that it is the allegation and counter allegation against each other without properly substantiated by the offence. So the contention on the part of the husband to the effect that he is not liable to pay the maintenance to the wife cannot be accepted and accordingly, it is rejected.

14. With regard to the quantum, the trial court has awarded the maintenance by taking into account the per day expenses at the rate of Rs.250/-.

15.No doubt that the maintenance amount can be fixed on the 1/3rd of the total amount of salary. But here, per day expense can be taken into account, which according to this court, does not suffer from any illegality or irregularity.



16.The earning capacity of the husband is the only criteria, that can be taken into account and that was also properly taken by the trial court.

17.Even though, the learned counsel appearing for the husband has pointed out that the gross salary of the husband is nearly Rs.53,142.26/-, after deducting, he is received only Rs.25,908/-. So he is not in a position to provide the monthly maintenance amount of Rs.22,500/-. But that cannot be taken into account, since two children were also to be maintained. So the above said amount cannot be considered to be excessive.

18.During the course of argument, it was pointed out by the learned counsel appearing for the husband that one of the children attained majority namely Hasia. If it is so, the husband is at liberty to file appropriate petition before the trial court seeking modification of the order, if she got married.

19.The date of attaining majority of the child namely Hasia is not known. Whether she got married or not is also not known. If she got married, then the husband



is at liberty to approach the concerned court seeking modification. So, I find no merit in the revision preferred by the husband.

20. Similarly, I find no merit in the revision, which is filed by the wife and children for enhancement of the maintenance amount.

21. For the reasons stated above, this court is of the considered view that both both the revisions are liable to be dismissed.

22. In the result, both the revisions are **dismissed**. Consequently connected Miscellaneous Petition is closed.

04/11/2022

Index: Yes/No
Internet: Yes/No
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To,

The Family Judge,
Kanyakumari @ Nagercoil.



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G. ILANGO VAN, J

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Cr1.RC(MD) Nos.937 of 2019 and 276 of 2020

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