



Crl.R.C.Nos.560 & 782 of 2022
and Crl.M.P.No.7988 of 2022

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DATED : 01.09.2023

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THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.R.C.Nos.560 & 782 of 2022

and

Crl.M.P.No.7988 of 2022

Dhivyaa ... Petitioner in Crl.R.C.No.560/2022

S.Arulselvam ... Petitioner in Crl.R.C.No.782/2022

Vs.

S.Arulselvam ... Respondent in Crl.R.C.No.560/2022

B.Dhivyaa ... Respondent in Crl.r.C.No.782/2022

Prayer in Crl.R.C.No.560/2022 : Criminal Revision is filed under Section 397 & 401 Cr.P.C. to enhance the maintenance amount from Rs.20,000/- to Rs.40,000/- awarded in M.C.No.603/2015 on the file of the VI Additional Family Court, Chennai on 28.02.2022.



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Prayer in Crl.R.C.No.782/2022 : Criminal Revision is filed under Section 397 r/w. 401 Cr.P.C. to set aside the orders dated 28.02.2022 in M.C.No.603/2015 on the file of the VI Additional Family Court, Chennai.

In Crl.R.C.No.560/2022 :

For Petitioner : Mr.R.Marudhachalamurthy
For Respondent : Mr.V.Elangovan

In Crl.R.C.No.782/2022 :

For Petitioner : Mr.V.Elangovan
For Respondent : Mr.R.Marudhachalamurthy

COMMON ORDER

Challenge in these criminal revision cases is made to the orders dated 28.02.2022 in MC No.603/2015 passed by the learned VI Additional Principal Family Judge, Chennai. While Crl RC No.560/2022 is filed by the wife seeking enhancement of the maintenance amount awarded by the trial court, the husband filed Crl.R.C.No.782/2022 to set aside the same.



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2.For the sake of convenience the parties are referred to by their names.

3.Dhivyaa and Arulselvam got married on 15.02.2013 at Vadapalani Murugan Temple, Chennai as per the Hindu Rites and Customs. After the marriage, the couple was initially living in a joint family with the parents of Arulselvam and thereafter, moved to a separate house at Pallikaranai. On 12.06.2013, the parents of Arulselvam came down to Pallikaranai and created problems in the family. On 14.12.2013, at the instigation of his mother, Arulselvam pulled his wife Dhivyaa by catching hold of her hair and threatened her with dire consequences brandishing a knife. Therefore, Dhivyaa had to leave the matrimonial home on the same day. She thereafter, filed a petition in O.P. 327/2015 for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 against her husband which is pending before the VI Additional Principal Family Court, Chennai. In the meanwhile, the husband filed a petition in O.P. 4264/2014 seeking to dissolve the marriage under

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Section 13 (1) (i-a) of the Hindu Marriage Act. The same was allowed by the VI Additional Principal Family Court, Chennai on the ground of 'irretrievable breakdown of marriage'.

4. In the maintenance case, Dhivyaa had contended that her husband is working as an Assistant Manager in TCS earning a sum of Rs.1,00,000/- per month and in addition to that, he is also a business partner in Roshan Tours and Travels at Arumbakkam, Chennai. According to her, he owns several immovable properties in and around Chennai, Tharamangalam and Salem. Her further contention is that she is unable to maintain herself and therefore, she prayed for granting monthly maintenance of Rs.40,000/- to her. Arulselvam filed a detailed counter denying all the allegations of his wife and the learned Trial Court Judge allowed M.C.No.603/2015 by granting a sum of Rs.20,000/- per month to the petitioner/wife towards maintenance. The Trial Court Judge further directed the respondent/husband to pay the maintenance amount on or before the 10th day of every English calendar month and to pay arrears within a period of three months. Aggrieved over the same, the husband



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filed Crl.R.C.No.782/2022 for setting aside the maintenance amount awarded by the trial court while the wife filed Crl.R.C.No.560/2022 seeking enhancement of maintenance amount.

5. Mr.V.Elangovan, learned counsel appearing for Arulselvam contended that Arulselvam is earning only a sum of Rs.30,000/- per month and with that amount he has to maintain his old aged parents and therefore, he is not in a position to pay a sum of Rs.20,000/- per month to Dhivyaa, his wife.

6. Per contra, Mr.R.Marudhachalamurthy, learned counsel appearing for the wife contended that Arulselvam is actually working in Tata Consultancy Services, which was admitted by him before the trial court and even during the year 2017, his salary was Rs.40,000/- per month. His further contention is that he is a partner in Roshan Tours & Travels and is fetching a sizeable amount through the said business. He also contended that after getting divorce from the trial court, the husband had given his profile in 'Malar Kalyanamalai Matrimony' stating that he



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is an MBA graduate and working as a Manager in a private concern, Chennai earning a sum of Rs.60,000/- per month. He would therefore contend that the maintenance amount awarded by the trial court judge should be enhanced to Rs.40,000/- per month.

7. It is pertinent to point out that the respondent / husband did not adduce any documentary evidence to show his actual monthly income. In this regard, the learned trial court judge in his order had relied on the decision in **Rajnesh vs. Neha** reported in **(2021) 2 SCC 324** in which the following guidelines were issued :

"Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers Under Article 136 read with Article 142 of the Constitution of India:

(a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the concerned Family Court/District Court/Magistrate's Court, as the case may be, throughout



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(b) The Applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

(c) The Respondent must submit the reply alongwith the Affidavit of Disclosure within a maximum period of four weeks. The Courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the Respondent. If the Respondent delays in filing the reply with the Affidavit, and seeks more than two adjournments for this purpose, the Court may consider exercising the power to strike off the defence of the Respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings.⁷ On the failure to file the Affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on basis of the Affidavit filed by the Applicant and the pleadings on record;

(d) The above format may be modified by the concerned Court, if the exigencies of a case require the same. It would



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(e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the concerned Court may pass appropriate orders in respect thereof.

(f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the Court to serve interrogatories, and seek production of relevant documents from the opposite party Under Order XI of the Code of Civil Procedure; On filing of the Affidavit, the Court may invoke the provisions of Order X of the Code of Civil Procedure or Section 165 of the Evidence Act 1872, if it considers it necessary to do so; The income of one party is often not within the knowledge of the other spouse. The Court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.



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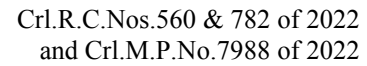
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(g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended/supplementary affidavit, which would be considered by the court at the time of final determination.

(h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the Court may consider initiation of proceeding Under Section 340 Code of Criminal Procedure, and for contempt of Court.

(i) In case the parties belong to the Economically Weaker Sections ("EWS"), or are living Below the Poverty Line ("BPL"), or are casual labourers, the requirement of filing the Affidavit would be dispensed with.

(j) The concerned Family Court/District Court/Magistrate's Court must make an endeavour to decide the I.A. for Interim Maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.



The above directions are issued in exercise of powers under Article 142 of the Constitution: The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the Family Court / District Court / Magistrates Court concerned, as the case may be, throughout the country."

8. A perusal of the records shows that Arulselvam had stated that Roshan Tours and Travels is owned by his parents and that he is not a partner in the said business. However, he was working as an Assistant Manager in Tata Consultancy Services and subsequently resigned on 20.12.2017. It is an admitted fact that he is presently working for another private concern. Though it is stated that his salary is only Rs.40,000/- per month no documentary evidence is adduced in this regard.

9. Normally, a person would switch over to another job for



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betterment of his career prospects and for getting higher pay scales. In the instant case, Arulselvam was employed in Tata Consultancy Services earning a sum of Rs.40,000/- per month, even in the year 2017. Therefore, it is unbelievable that his monthly income as on date remains the same.

10. Considering the financial and social status of the couple, this Court is of the view that awarding maintenance of Rs.30,000/- per month would meet the ends of justice. Thus, the maintenance awarded by the Trial Court Judge is enhanced from Rs.20,000/- to Rs.30,000/- per month. Accordingly, the Criminal Revision filed by the wife in Crl.R.C.No.560/2022 is partly allowed and the Criminal Revision filed by the husband in Crl.R.C.No.782/2022 is dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R.HEMALATHA.J.,

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To

1.The VI Additional Family Court, Chennai.

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