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Crl.MP.(MD).Sr.No.2801 of 2023 in

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2023

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.MP.(MD).Sr.No.2801 of 2023 in

Crl.RC.(MD).No.918 of 2017

S.Sivakumar

...Petitioner / Petitioner

Vs.

1.Sakthiveeralakshimi
2.Minor Samirtha Dhanyashri
(Minor is represented through the
first respondent/mother)

... Respondents / Respondents

PRAYER: Criminal Miscellaneous Petition is filed under Section 482 of Cr.P.C., to recall the order dated 03.09.2021 passed in Crl.R.C.(MD).No.918 of 2017 on the file of this Court and allow the present Recall Application.

For Petitioner : Mr.S.Karthikeyan

For Respondents : M/s.A.Mary for
Mr.A.Sivaji

ORDER

When the case came up for hearing for an earlier occasion, the learned Counsel for the Petitioner sought to review the order passed in Crl.R.C.(MD).No.918 of 2017 dated 03.09.2021. It was made clear that the order passed in Crl.R.C.(MD).



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No.918 of 2017 is based on the materials available before the Trial Court and therefore there is no material irregularity to exercise the powers of the Revision of this Court to interfere with the findings of the learned Judge, Family Court, Srivilliputhur.

2.At that point of time, the learned Counsel for the Revision Petitioner in Crl.R.C.(MD).No.918 of 2017 submitted that he had not furnished the salary particulars before the learned Judge, Family Court, Srivilliputhur which had resulted in the Revision Petitioner (Husband) suffering an order of maintenance passed against him based on presumption of the learned Judge, Family Court, Srivilliputhur. Again based on the presumption of 5th and 6th pay commission, thereby fixing the salary of the Petitioner on presumption.

3.In Crl.MP.(MD).Sr.No.2801 of 2023 seeking review of the order in Crl.R.C.(MD).No.918 of 2017, the order passed by this Court cannot be entertained. Now, at the stage when the Revision Petitioner herein who is the Respondent in the Maintenance Case having the opportunity to furnish his salary particulars to the learned Judge, Family Court, Srivilliputhur to enable the learned Judge to pass appropriate orders for Maintenance, sought for by the Wife and the Minor Child.



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4. Since he had not furnished the salary particulars/salary certificate, he cannot be permitted to raise those cases at the stage of Crl.M.P.(MD)Sr.No.2801 of 2023 to review the order of the Crl.R.C.(MD).No.918 of 2017.

5.Any how since he had furnished all the details of the salary particulars for the past several years, a chance was given to him to pay the maintenance order, as ordered by the learned Judge, Family Court, which was confirmed in the Crl.R.C.(MD).No.918 of 2017 directing the Revision Petitioner to pay the entire arrears before the learned Judge, Family Court, Sriviliputhur and an opportunity was afforded to the Revision Petitioner/ Husband who had filed the petition to review the order in Crl.MP.(MD).Sr.No.2180 of 2023. This was a condition to consider the question of maintainability. Since it is a un-numbered petition, the case was adjourned from 20.04.2023 to 30.06.2023.

6.Today (30.06.2023) when the case was taken up for hearing, the learned Counsel for the Respondent/Wife is present before this Court and submits that the Petitioner had not complied the conditional order passed by this Court.

7.To the enquiry by this Court, the learned Counsel appearing for the Revision

Petitioner who is the Review Petitioner also fairly concedes the same stating that
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there is a ruling in support of this case. This Court cannot be ordered to pay the entire arrears as per the rulings of the Hon'ble Delhi High Court in the case of **Sabina Sahdev and Others Vs. Vidur Sahdev** dated 09.07.2018. Relevant Paragraph of the said judgement reads as under:

“30.Thus, we answer the reference by holding that the general direction issued in Rajeev Preenja (supra) in paragraphs 15, 16 and 20 are not sustainable. The said directions could not have been issued by the learned single judge as they seek to curtail the statutory remedy of revision available under Section 399 read with Section 401 of the Cr.P.C, and of appeal under Section 29 of the DV Act, against orders granting interim maintenance under Section 125 Cr.P.C and Section 23 of the DV Act respectively. The direction in question over steps into the legislative field, which was impermissible for the Court to do. We agree with the view taken by the learned Single Judge in Brijesh Kumar Gupta (supra), that there cannot be an absolute rider that the entire maintenance amount, as granted by the Trial Court, should be deposited, prior to the entertainment of the statutory remedy, because it would leave the remedy of statutory revision/appeal illusory. Accordingly, we



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hold that a revision under Section 399 read with Section 401 Cr.P.C and an appeal under Section 29 of the DV Act, against the order granting maintenance under Section 125 Cr.P.C and under Section 23 of the DV Act respectively, would be maintainable, and would be entertained and heard without any pre-condition of deposit of the arrears of maintenance as ordered by the Ld.MM. We further hold that the pendency of such a Revision or Appeal-as the case may be, shall not operate as a stay of the operation of the order granting interim maintenance. The reference is answered accordingly."

8.The facts in the reported rulings will not apply to the facts of the case. Here it is a case where the Petitioner herein Husband had the opportunity to participate in the enquiry at the first instance before the learned Judge, Family Court, Sriviliputhur. He had not adduced the evidence disputing the claim of the Wife regarding his salary.

9.It is to be noted that the first year after marriage the wife was taken to his place of service at Bombay Airport. The wife is a graduate person and she was aware of the salary of the husband during her cohabitation with him at Bombay.



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10.It is a case of the wife before the Family Court, that he tortured her during the period of cohabitation at Bombay. After delivery of the female child, he did not take her back to Bomaby. Therefore, she was forced to file a petition seeking maintenance before the Family Court, Sriviliputhur.

11.By that time, the Husband had been transferred from Bombay to Airport at Trivandram and he was served with notice from the Court concerned. He had engaged a counsel and he is not an illiterate person. He is a technically qualified person. He is aware of the averments in the petition filed by the Wife regarding his salary specifically stated in the Maintenance Case. Therefore, she sought maintenance for her and child. The Husband as Respondent in the Maintenance Case engaged Counsel and filed counter. But did not enter the witness box during enquiry. Therefore, after conclusion of the enquiry based on the arguments by both parties, the learned Judge, Family Court, Sriviliputhur who has the authority under the Indian Evidence Act, to take notice of Act of Parliament and also official Act of the State had drawn presumption regarding the pay rise during the period he served at Bombay Airport and to the period where he was serving during the period of enquiry at Trivandram Airport. Since there was no material furnished by the

Husband, the learned Judge had on his own acted fairly without any bias and had

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passed appropriate orders. After suffering an order, the Respondent in the Maintenance Case preferred Crl.R.C.(MD).No.918 of 2017 before the Madurai Bench of this Court. After hearing the Revision Petitioner as well as the Respondent Counsel, this Court had passed a considered order. There is no material irregularity by the learned Judge, Family Court, Sriviliputhur who had passed order in the Maintenance Case filed by the Wife and the minor child. Therefore, Crl.R.C.(MD).No.918 of 2017 was dismissed.

12.Only after suffering the dismissal of the Crl.R.C.(MD).No.918 of 2017, the Husband who is the Respondent in the Maintenance case, who is the Revision Petitioner in the Crl.R.C.(MD).No.918 of 2017 had come up with a petition to review the order passed in Crl.R.C.(MD).No.918 of 2017. In this Crl.M.P.(MD).Sr.No.2801 of 2023, Mr.Karthikeyan, learned Counsel for the Petitioner had entered appearance and sought permission of the Court to mark documents. During the period in which from Bombay till Trivandram the pay rise of the Husband with due salary certificate.



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13.At that stage, it was made clear, to the learned Counsel for the Petitioner in Review Petition Crl.R.C.(MD).No.918 of 2017, he should deposit the entire arrears before the learned Judge, Family Court. Therefore two months time was granted from 20.04.2023 till 30.06.2023. In the light of those developments, the relevant paragraph of reported rulings of the Delhi High Court is not at all applicable to the facts of the case.

14.Here is a case where the Husband who is employed and having regular income neglected to maintain his wife. Therefore, she was forced to claim maintenance for herself and minor daughter. During the enquiry, he did not furnish salary certificate.

15.Only after dismissal of the Crl.R.C.(MD).No.918 of 2017, he offered to furnish details of the salary due from the period when he was serving at Bombay till the period when she suffered the order, when he was serving at Trivandram Airport.

16.This Court had granted leeway so that future maintenance amount can be reduced only if he pays the arrears of the entire arrears, but he was adamant. Therefore, it is found that he is taking advice or he is prevailing upon his Counsel to seek extension of time to play dilatory tactics. Therefore evading the maintenance

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till his retirement from service. That cannot be considered in the light of the above reported ruling.

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17. Therefore, the above reported ruling is not applicable to the facts and circumstances of the case and the reported ruling cited by the learned Counsel for the Petitioner is rejected as not applicable to the facts of this case. Hence, this un-numbered petition is rejected at the SR stage itself.

18. The learned Judge, Family Court, Sriviliputhur is directed to act as per the law in the light of the order already passed by the learned Judge, Family Court and confirmed the Crl.R.C.(MD).No.918 of 2017.

Sd/-

Assistant Registrar(CS III)

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/08/2023

Sub Assistant Registrar(CS)

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To

The Judge, Family Court, Srivilliputhur.



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THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2 CC to M/s.A.SIVAJI, Advocate (SR-32100[F] dated 03/07/2023)

+1 CC to M/s.S.KARTHIKEYAN, Advocate (SR-32439[F] dated 04/07/2023)

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