



Crl.R.C.(MD).No.537 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2023

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.R.C.(MD).No.537 of 2022
and Crl.M.P(MD) No.6711 of 2022

1.Kannan

2.Valli

.. Petitioners / Respondents /
Respondents

Vs.

1. Anitha

2. Minor Dhanashree

3. Minor Harinarayanan

.. Respondents / Petitioners /
Petitioners

PRAYER: This Criminal Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records relating to the order dated 22.02.2022 in Crl.A. No.139 of 2019 on the file of the IV Additional District Court, Madurai, enhanced the order dated 19.08.2019 made in M.C.No.275 of 2014 on the file the Additional Mahila Court, Madurai and set aside the same as illegal.

For Petitioner : Mr. M.Ajmalkhan, Senior counsel.

For Respondent : Mr. K.Balasundharam



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ORDER

This Criminal Revision Case has been filed to call for the records relating to the order dated 22.02.2022 in Crl.A. No.139 of 2019 on the file of the IV Additional District Court, Madurai, enhanced the order dated 19.08.2019 made in M.C.No.275 of 2014 on the file the Additional Mahila Court, Madurai and set aside the same as illegal.

2. The facts in brief:

The marriage between one Kannan/1st Petitioner and Anitha/1st respondent took place on 01.06.2005 as per the family customs and rites. At that time of marriage, she was provided sufficient sridhana articles, jewellery, extra. Because of the above said marriage, they begot two children. The husband is the maternal uncle. But the husband and his parents started irritating her stating that she has not brought sufficient jewellery, extra. The husband was working as Head Constable in Tamil Nadu Police Department. Later, the wife came to know that the husband is having illegal intimacy with some other girls, that was objected by him, but inspite of that, the harassment continued. She lodged a complaint with Superintendent of Police, Virudhunagar, about the conduct of the husband.



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Later, the husband was transferred to Alanganallur Police Station. The wife and children were living in her parental home. On 18.01.2014, the husband asked the wife to bring Rs.10,000/- from her parents for giving to his brother, when that was refused and objected by the wife, she was severely assaulted and they tried to kill her. Because of the above said assault, she was admitted in hospital. They also tried to get divorce and arranged to another marriage with some other girl. They demanded signature in the divorce papers and they have filed divorce petition also. But that petition was filed by the husband without proper consent of the wife. But however, that petition was dismissed. Now, the husband is continuing the illegal intimacy with some other girls and getting more than Rs.30,000/- per month as salary, through which, he is getting interest by giving money as loan to the third parties.

3. The wife and children are living without proper care and maintenance. For claiming the maintenance amount of Rs.10,000/- for herself, Rs.5000/- each for children and for claiming various reliefs, she filed a petition before the trial Court under the provision of Protection of Women from Domestic Violence Act. At the conclusion of the enquiry, payment of Rs.4,000/- as maintenance to the wife and children each was



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ordered by the trial Court, the total amount was fixed as Rs.12,000/- and in respect of other reliefs, it was dismissed, against which, the wife preferred the Criminal Appeal No.139 of 2019 before the Additional District Judge, Madurai, and it came to be allowed by enhancing the maintenance amount to Rs.6,000/- each to the wife and children, it was also ordered from the date of filing of Maintenance Case before the trial Court, against which, this revision has been preferred.

4. Only short point has arisen for consideration, even though it has been stated above by the revision petitioner that the order of maintenance from the date of petition by the appellate Court is *per se*, not lawful. But the learned counsel for the respondent would rely upon the judgment of honourable Supreme Court reported in ***Rajnish Vs. Neha and another CDJ 2020 SC 809***, for the purpose of argument that maintenance order has to take effect only from the date of petition not from the date of order. The paragraph No.4 of the above said judgment of honourable Supreme Court is relating for our discussion reads as follows,



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“(d) Date from which maintenance is to be awarded We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B – IV above.”

It is also relied by the appellate Court. After elaborately discussed with the views of different High Courts for maintaining uniformity throughout the country, it was ordered that it must be ordered to take effect only from the date of the petition. So, this cannot be found fault by the revision petitioner.

5. However, the senior counsel appearing for the petitioner submitted that the original petition was filed before the enquiry Court in 2014, the order was passed by the enquiry Court in 2019 and the appellate Court passed the order in 2022. So on the date of application namely M.C.No.275 of 2014 before the trial Court, salary of the husband was Rs.22,000/- that was not properly considered by the appellate Court. According to him, enhancing itself from the date of petition is not proper.



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6. But even though, he has produced the pay slip for the month of January 2014 before this Court, that was not presented either before the trial Court or before the appellate Court at that time of enquiry and argument. But he has produced only his statement of Bank account from 01.08.2012 to 30.09.2014.

7. Now let us go to the findings of the trial Court over the income of the revision petitioner. The trial Court simply stated that this revision petitioner is working in Tamil Nadu Police Department. But no discussion has been made with regard to the monthly salary as well as the other source of income. The appellate Court found that in December 2015, he was getting salary amount of Rs.29,233/- per month, but he failed to produce the particulars of monthly income after December 2015. Similarly no steps have been taken by the respondent to prove monthly salary of her husband. Noting that when the revision petitioner was getting enhanced salary, the above said order of Rs.6,000/- have been passed to take effect from the date of main petition.

8. Now the grievances of the revision petitioner that if the total amount of Rs.18,000/- is ordered to be paid from the date of main petition,



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it will cause huge financial burden to him. Apart from that he was regularly paying interim maintenance amount as well as the education expenses of the children. Even during the course of hearing, the revision petitioner was directed to pay school fees that was also complied by him. That was not disputed by the respondent herein. The receipt of school fees is also produced before this Court. Pay slip for the month of July 2022 also produced, wherein we find that, he was getting salary of Rs.61,760/-. But those things cannot be taken into account at this stage. Now he is getting Rs.61,760/- but in 2014, he was getting only Rs.29,233, when only the petition in M.C.No.275 of 2014 is filed.

9. I am of the considered view that the order of Rs.4,000/- each per month from the date of petition is reasonable one, but so far as the enhancement is concerned, it could not take effect from the date of maintenance case. But it is take effect only from the date of appeal in the appellate Court.

10. This Criminal Revision Petition is ordered with direction to the revision petitioner to pay monthly maintenance of Rs.4,000/- each per month to the respondents from the date of filing of Maintenance Case before



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the trial Court till the date of the filing of the appeal and he has to pay Rs.6,000/- each per month from the date of filing of the appeal before the appellate Court. The arrear amount shall be paid in installments. Consequently, the connected Miscellaneous Petition is closed.

20.02.2023

NCC:Yes/No
Index : Yes / No
Internet : Yes / No
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To

The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN,J.

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