



Crl.O.P.(MD)No.10399 of 2020 & Crl.R.C(MD)No.466 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2024

CORAM:

THE HONOURABLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**Crl.O.P.(MD)No.10399 of 2020 and Crl.M.P.(MD)No.4787 of 2020
and
Crl.R.C(MD)No.466 of 2021 and Crl.M.P.(MD)No.4956 of 2021**

Crl.O.P.(MD)No.10399 of 2020

Dilip Raja ... Petitioner/Revision Petitioner/Respondent

vs.

1.Kalima Banu

2.Minor D.Shahima Banu

[1st Respondent is mother and natural guardian

for the second respondent]

...Respondents/Respondents

Prayer:- Petition filed under Section 482 of Cr.P.C., to call for the records in CRP.No.1 of 2019 dated 24.06.2020 on the file of the learned Fast Track Mahila Court, Theni District, “confirmed” the order passed in M.C.No.23 of 2015 on the file of the learned Judicial Magistrate, Uthamapalayam dated 28.08.2018 and set aside the same.

For Petitioner : Mr.N.Mohideen Basha

For Respondents : Mr.I.Mohamed Razvi



Crl.O.P.(MD)No.10399 of 2020 & Crl.R.C(MD)No.466 of 2021

Crl.R.C(MD)No.466 of 2021

WEB COPY

1.Kalima Banu
2.Minor D.Shahima Banu
[1st Respondent is mother and natural guardian
minor second petitioner] ... Revision Petitioners/Petitioners

vs.

Dillip Raja ...Respondent/Respondent

Prayer:- Petition filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the order passed in M.C.No.23 of 2015 on the file of the learned Judicial Magistrate, Uthamapalayam, Theni District, dated 28.08.2018 and to revise the same by directing the respondent to pay more maintenance to the petitioners from the date of application.

For Petitioners : Mr.I.Mohamed Razvi

For Respondent : Mr.N.Mohideen Basha

COMMON ORDER

Crl.O.P.(MD)No.10399 of 2020 is filed by the husband, Dilip Raja. Crl.R.C.(MD)No.466 of 2021 is filed by the wife, Kalima Banu and the minor child Shahima Banu.



Crl.O.P.(MD)No.10399 of 2020 & Crl.R.C(MD)No.466 of 2021

WEB COPY

2.Originally, the wife and child filed a petition for maintenance under Section 125 of the Code of Criminal Procedure in M.C.No.23 of 2015. After considering the case of the parties, examination of the witness and appreciation of evidence, by a Judgment dated 28.08.2018, the petition was allowed with direction to pay a sum of Rs.7000/- each to the wife and child on or before 5th of every calendar month. Aggrieved by the same, the petitioner/wife is before this court by way of criminal revision to enhance the quantum. The husband filed Criminal Revision Petition No.1 of 2019 before the learned Fast Track Mahila Court, Theni District and by an order dated 24.06.2020, the said revision petition was dismissed and the order of the learned Magistrate was confirmed. Impugning the said order and the original order, the above criminal original petition is filed before this Court.

3.The learned counsel appearing for the husband, would contest that after filing of the proceedings, in view of the repeated First Information Reports lodged by the wife, the husband lost his employment from the company known as Kaiba in which he was originally working and at present he is now residing at Tenkarai in Theni District. He is only carrying on agricultural activities and is not even earning minimal income.



Crl.O.P.(MD)No.10399 of 2020 & Crl.R.C(MD)No.466 of 2021

WEB COPY

Apart from maintaining the wife and child, he has also since re-married to yet another woman and he has to look after his mother, who is ailing from Cancer. Therefore, he is not in a position to afford such a huge amount. Therefore, he prays that the amount should be reduced.

4.Per contra, Mr.I.Mohamed Razvi, learned counsel appearing on behalf of the wife would submit that the husband was earning a sum of Rs.60,000/- and he also possessed agricultural lands and he is also exporting agricultural products and fruits to foreign countries. The trial Court ought to have ordered further amounts. The amount of Rs.7000/- which is ordered is absolutely inadequate. The learned counsel would submit that in any event when the trial Court had ordered the maintenance, it should be only from the date of petition, and the same is not specifically mentioned in the order of the trial Court and therefore, the revision petition is filed.

5.I have considered the rival submissions made on either side and perused the material records of the case.



Crl.O.P.(MD)No.10399 of 2020 & Crl.R.C(MD)No.466 of 2021

WEB COPY

6.As rightly contended by the learned counsel for the wife, when the husband has chosen to file a revision before the District Court, the scope of enquiry in the criminal original petition filed by the husband is very limited. Be that as it may, when it is an admitted case that the respondents are the wife and child of the petitioner, the petitioner is bound to maintain them. Eventhough it is argued on behalf of the husband that the wife is since working, no such evidence was let in before the trial Court and there is absolutely no material proof with reference to the same. In the absence of the same, Rs.7000/- per month for the wife as well as the child is only the barest minimum and therefore, this Court is unable to interfere on the quantum. With reference to the affordability of the petitioner is concerned, admittedly, the petitioner is a B.E. Graduate, originally working in the software concern. Eventhough now the petitioner pleads that his job has gone, firstly, it should be seen that no such order of relieving or removal from service has been placed on record before the trial Court or before this Court. Even otherwise, when the petitioner had such a qualification and when he is said to be involved in agricultural activities, still, it cannot be said that a sum of Rs.14,000/- is an unaffordable amount to the petitioner.



Crl.O.P.(MD)No.10399 of 2020 & Crl.R.C(MD)No.466 of 2021

WEB COPY

7. In view thereof, I am unable to accept the contentions made on behalf of the husband. Now, as far as the contention of the respondent/wife is concerned, for the same reasons that there is no other proof, which is concretely filed before the trial Court or before the Court that the husband is earning more than Rs.1,00,000/-, I am not in a position to accept the argument of the learned counsel for the respondent/wife that the maintenance amount should be enhanced. But, however, once the petition for maintenance is filed, it goes without saying that if the trial Court orders the maintenance amount, the same will become payable from the date of filing of the petition. To that extent, the order of the trial Court in M.C.No. 23 of 2015 is erroneous in as much as in the last paragraph, it merely says that the Court fixes the maintenance amount and it is ordered that the monthly maintenance should be paid or before 5th of every month, no order has been passed with reference to which date from which the amount is payable. Therefore, except to modify the order of the trial Court that the maintenance as fixed by the trial Court is to be paid from the date of filing of the petition, ie., w.e.f., 30.09.2015, that is to say from the month of October 2015, the maintenance amounts need to be paid, the trial Court order is confirmed.



Crl.O.P.(MD)No.10399 of 2020 & Crl.R.C(MD)No.466 of 2021

8.With the above modification, both the Criminal Original
Petition and the Criminal Revision Petition stand disposed of.
Consequently, connected miscellaneous petitions are closed.

23.08.2024

NCC : No
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To

- 1.The Fast Track Mahila Court, Theni District.
- 2.The Judicial Magistrate, Uthamapalayam.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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Crl.O.P.(MD)No.10399 of 2020 & Crl.R.C(MD)No.466 of 2021

D.BHARATHA CHAKRAVARTHY, J.

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