



Crl.R.C.No.344 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated :18.03.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Revision Case No.344 of 2021

U. Prabhu

.. Petitioner

Versus

T. Kanimozhi

.. Respondent

Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C to call for the records in connection with the order dated 17.02.2020 in Criminal Appeal No. 102 of 2019 on the file of learned II Additional District and Sessions Judge, Poonamallee against the order dated 17.09.2019 passed in C.M.P. Nos. 1608 and 1607 of 2019 in D.V.C. No. 10 of 2018 on the file of learned Judicial Magistrate, Ambattur.

For Petitioner	:	Mr. S. Silambuselvan
For Respondent	:	Mr. V. Sundar Raman for Mr. A. Laxmi Rajarathinam

ORDER

This Criminal Revision case is filed to set aside the order dated 17.02.2020 passed by the learned II Additional District and Sessions Judge, Poonamallee in Criminal Appeal No.102 of 2019 dismissing the Criminal Appeal for Non Prosecution, which was filed against the order dated 17.09.2019 passed in C.M.P.Nos.1608 and 1607 of 2019 in D.V.C.No.10 of 2018 before the learned Judicial Magistrate, Ambattur.



WEB COPY2. The brief facts, which are necessary for the disposal of this Criminal Revision Case, are as follows:-

2.1. The Respondent herein has filed D.V.C. No. 10 of 2018 before the learned Judicial Magistrate, Ambattur, in which she has narrated various instances that had taken place during the matrimonial home to drive home the point that she was subjected to intense matrimonial cruelty by the Petitioner and his mother. Among many complaints, it was stated that the Petitioner is addicted to alcoholic drinks and under the influence of alcohol, he had physically assaulted the Respondent on many occasions. It was also stated that demanding more money and jewels, she was driven to her parents house on several occasions. Further, it was stated that even after the birth of a female child on 01.11.2013, the Respondent was subjected to cruel treatment and therefore, she had filed Maintenance Case, followed by the instant Domestic Violence Case.

2.2. A counter was filed by the Petitioner herein categorically denying each and every one of the averments and contended the entire averments in the Domestic Violence Case are *per se* false. It was stated that the Petitioner is not addicted to alcoholic drinks as alleged and such allegations are made only for the purpose of filing the present case. It is further stated that the allegations



Crl.R.C.No.344 of 2021

regarding demand of money or jewels are untenable.

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2.3. During the pendency of the D.V.C. No. 10 of 2018, the Respondent herein had filed two Miscellaneous Petitions namely Crl.M.P. No. 1607 and 1608 of 2019. The first petition in Crl.M.P. No. 1607 of 2019 was filed under Section 19 of The Protection of Women from Domestic Violence Act, praying to direct the Petitioner to pay a sum of Rs.25,000/- towards maintenance. The second petition in Crl.M.P. No. 1608 of 2019 was filed under Section 23 (1) of the said Act to direct the Petitioner to provide her shared household in the matrimonial home.

2.4. Both the applications in C.M.P.No.1607 of 2019 and C.M.P.No.1608 of 2019 in D.V.C.No.10 of 2018 were taken up by the learned Judicial Magistrate, Ambattur, for enquiry. After analysing the evidence made available, a common order dated 17.09.2019 was passed allowing both the petitions *inter alia* directing the Petitioner to pay a sum of Rs.15,000/- per month as maintenance.

2.5. Challenging the order dated 17.09.2019 in CMP Nos. 1607 and 1608 of 2019 in D.V.C. No. 10 of 2018, the Petitioner has filed Criminal Appeal No. 102 of 2019 before the learned II Additional District and Sessions



Crl.R.C.No.344 of 2021

Judge, Tiruvallur at Poonamallee. However, when the Appeal was taken up for hearing on 17.02.2020, since there was no representation for the Petitioner, the Appeal was dismissed by the Appellate Judge for default.

2.6. Aggrieved by the order of dismissal dated 17.02.2020 passed in Criminal Appeal No.102 of 2019 passed by the II Additional District and Sessions Judge, Tiruvallur at Ponamallee, the present Criminal Revision Case had been filed.

3. During the pendency of this Criminal Revision Case, the Respondent has filed C.M.P. No. 5529 of 2019 in DVC No. 10 of 2018 praying to direct the garnishee/employer of the Petitioner to deposit the maintenance amount and arrears thereof in C.M.P. No. 1607 of 2019, dated 17.09.2019. The said application was allowed on 12.05.2020 directing the employer of the Petitioner to deduct Rs.2,10,000/- in 21 equal monthly instalments of Rs.10,000/- towards the arrears of interim maintenance payable from 21.03.2019 directly into the bank account of the Respondent herein.

4. The learned Counsel for the Revision Petitioner submitted that the learned II Additional District and Sessions Judge, Tiruvallur at Poonamallee dismissed the Appeal for default without affording sufficient and adequate



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opportunity to the Petitioner. It is stated that the Revision Petitioner is employed at Bharat Heavy Electricals Limited, Tiruchirapalli, as a Fitter and he is unable to attend the hearing of the Court at Chennai, often. Instead of dismissing the Appeal for default, the learned Appellate Judge ought to have engaged the service of the Legal Aid Counsel for the Appellant and disposed of the Appeal on merits but it was not done. Therefore, this Criminal Revision case had been filed by the Petitioner/husband.

5. The learned Counsel for the Revision Petitioner further submitted that the Revision Petitioner is a Fitter employed in Bharat Heavy Electricals Limited, Tiruchirapalli. In his childhood, he lost his father. His mother brought him up with great difficulties. Since 2012, she has been suffering from cancer. He has to take care of her aged mother and to give her best treatment. In such circumstances, the amount ordered by the learned Judicial Magistrate, Ambattur, granting Rs.15,000/- per month to the wife as maintenance is exorbitant. Further, he would submit that the Respondent-wife is now employed as Anganwadi Worker (Noon Meal Organiser) and receiving salary and therefore also, he seeks for modification of the order passed by the Courts below.



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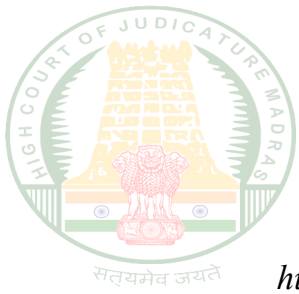
that the husband had filed H.M.O.P. No. 1 of 2018 before the learned Judge, Family Court, Trichy. Subsequently, the wife had preferred a Petition for Transfer before this Court and it was allowed. On the basis of the order passed by this Court, the HMOP No. 1 of 2018 was transferred and re-numbered as HMOP No. 361 of 2019 on the file of Sub Judge, Ambattur and it is pending.

7. It is further contended by the learned Counsel for the Revision Petitioner that he had availed Provident Fund loan, LIC loan with the result, after deduction of the loan, he is receiving Rs.3,664/- only which is not sufficient to maintain himself. He is ready to take back the wife even though, she left on her own volition to Chennai and living separately.

8. In support of his contention, the learned Counsel for the Revision Petitioner relied on the judgment of the Hon'ble Supreme Court in the case of ***Rajathi vs. C.Ganesan*** reported in ***(1999) 6 Supreme Court Cases 326***, wherein it has been held thus;

“Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.



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(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

9. The learned Counsel for the Revision Petitioner also furnished the payslip for the month of January 2021 wherein the total salary of the Petitioner is mentioned as Rs.77,760.68/-. Out of the total salary, Rs.76,018.56/- is being deducted and the Net pay comes to Rs.325/- during the month of January 2021. Based on order of the trial Court in the Domestic Violence Case and the Maintenance Case, a total sum of Rs. 25,000/- is being deducted from the salary of the Petitioner every month and paid to the Respondent-wife. Therefore, it is submitted that the maintenance amount ordered by the Court below is enormous and therefore, the learned Counsel for the Petitioner prayed for allowing this Criminal Revision Case.

10. Per contra, the learned Counsel for the Respondent submitted that the marriage between the parties was an arranged marriage and they set up the matrimonial home at Trichy. It is the submission of the learned Counsel for the Respondent/wife that the friends of the Revision Petitioner often used to come to the home and they used to take alcoholic drinks in the house, which was



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protested by the Respondent-wife. It is also submitted that the Petitioner is addicted to alcoholic drinks and when this was questioned, misunderstanding arose between them. Since the Revision Petitioner/Husband did not heed to the advice of the wife and she was attacked and driven out by the Revision Petitioner, she came back to Chennai with her minor daughter and staying in her parents house. It is his further submission that the minor daughter also needs the father's affection and that is why, she had filed petition in H.M.O.P. No. 33 of 2018 before the Sub Court, Poonamallee, seeking restitution of conjugal rights. In H.M.O.P.No.33 of 2018, the husband, who was the Respondent left it unattended. Therefore, it was decreed *ex parte*. In the Domestic Violence Case, she had sought residence as well as interim maintenance. After enquiry, a common order was passed on 17.09.2019, granting interim maintenance of Rs,15,000/- per month to the wife and minor daughter besides a residence order was also ordered. Aggrieved by the same, the husband had preferred Criminal Appeal, which was not contested or proceeded with. Therefore, the Appeal was dismissed for default by the learned II Additional District and Sessions Judge, Tiruvallur at Poonamallee by judgment dated 17.02.2020. It is the submission of the learned Counsel for the Respondent that the amount of Rs.15,000/- ordered by the trial Court is a reasonable amount for the Respondent and her minor daughter. Since the Petitioner did not pay the maintenance amount, an application was filed



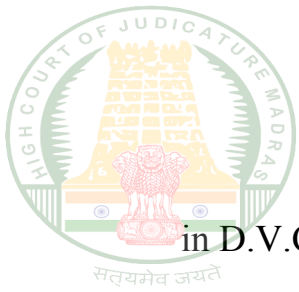
seeking to issue appropriate direction to the garnishee/employer of the Petitioner and it was also ordered. Therefore, it is submitted by the learned Counsel appearing for the Respondent that the maintenance amount ordered is just and reasonable. The Criminal Revision Case has no merits and it is to be dismissed.

Point for consideration:

Whether the order dated 17.02.2020 passed in Criminal Appeal No. 102 of 2019 on the file of learned II Additional District and Sessions Judge, Tiruvallur at Poonamallee confirming the order dated 17.09.2019 passed in C.M.P. Nos. 1608 and 1607 of 2019 in D.V.C. No. 10 of 2018 on the file of learned Judicial Magistrate, Ambattur is to be set aside as perverse?

11. Heard the learned Counsel for the Revision Petitioner and the learned Counsel for the Respondent. Perused the materials placed on record, including the orders passed by the Courts below.

12. To the query of this Court whether D.V.C. No. 10 of 2018 had been disposed of, the learned Counsel for both sides submitted that it is still pending. It is further stated that the case was posted on 11.12.2023 for recording evidence of Respondent side. Thus, it is evident that the proceedings



Crl.R.C.No.344 of 2021

in D.V.C. No. 10 of 2018 is in advance stage.

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13. It is seen from the records that due to simmering matrimonial dispute, multiple cases have been filed among the parties. Apart from maintenance case, the Respondent has filed D.V.C. No. 10 of 2018. The husband has also filed HMOP No. 1 of 2018 which was transferred and re-numbered as HMOP No. 361 of 2019 (HMOP No. 481 of 2023) and it is pending on the file of Sub Judge, Poonamallee. That apart, the Respondent-wife filed H.M.O.P. No. 33 of 2018 before the Sub Court, Poonamallee, seeking restitution of conjugal rights.

14. As far as the dispute involved in the present Criminal Revision Case is concerned, the learned Judicial Magistrate, Ambattur, granted a sum of Rs.15,000/- to the Respondent towards maintenance and the Appeal filed thereagainst by the Petitioner was dismissed for default.

15. According to the Petitioner, he is working in Tiruchirapalli and he is finding it difficult to attend the hearing in the case, which has resulted in passing the order dated 17.02.2020 dismissing the Appeal for default.

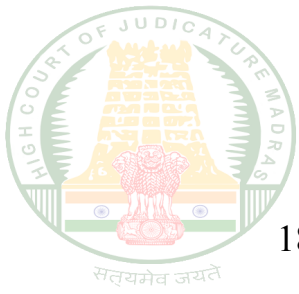
<https://www.mhc.tn.gov.in/juds> 16. As far as the Petitioner is concerned, he had produced the salary



CrI.R.C.No.344 of 2021

slip to show that after all the deductions, he is receiving a net pay of Rs.325/- during January 2021. The deductions include maintenance amount which is being deducted from his salary by the employer as per the Garnishee order dated 12.05.2020 passed in CMP No. 5529 of 2019 in DVC No. 10 of 2018. It is stated that the Petitioner finds it difficult even to maintain himself or to treat his ailing mother, who is battling from cancer. It is also stated that the Respondent is employed in a noon meal organisation and receiving her salary.

17. It is not in dispute that the Respondent is employed as a noon meal organiser and is receiving salary. The salary certificate of the Respondent-wife has not been produced. It is also seen that after all the deductions, including the amount towards maintenance amount to the Respondent, the Petitioner is in receipt of a very meager salary of Rs.325/- during January 2021. It is needless to mention that maintenance amount shall not be a bounty to be received by the wife. While granting maintenance amount, the amount which is required to be spent by the husband for his basic needs, the deductions towards loan and other reasonable expenses also have to be considered. If the wife is employed and is in receipt of salary, it has also to be taken note of by the Courts while directing the husband to pay maintenance amount. Instead maintenance cannot be granted for the sake of granting it.



18. Applying the above factors in this case, when the husband is receiving only a sum of Rs.325/- per month as maintenance, there is nothing wrong in curtailing the maintenance amount payable to the wife to half. It must also be borne in mind that out of the wedlock between the Petitioner and Respondent a female child was born and she must be 11 years by now.

19. The learned Judicial Magistrate, Ambattur on verification of the salary slip furnished by the Respondent found that what had been stated by the Respondent is true and he is in receipt of Rs.365/- as monthly salary during January 2021. The deductions include deduction of Rs.25,000/- towards maintenance amount to the Respondent under the caption "Court Order". Thus, the Respondent-wife is in receipt of Rs.25,000/- per month from the salary of the Petitioner, while the Petitioner, who is actually earning is only in receipt of Rs.365/- per month. This is pathetic and unfortunate. It is also found that many of the deductions had been made based on the loan availed by the Respondent which are not necessary for normal course of an ordinary prudent man. Many of the loan had been availed by the Respondent to avoid payment of such interim maintenance to wife. Therefore, this Court is of the view that the order dated 17.02.2020 passed in Criminal Appeal No. 102 of 2019 on the file of II Additional District and Sessions Judge, Poonamallee is to be confirmed.



Crl.R.C.No.344 of 2021

WEB COPY20. In the light of the above discussion, the point for consideration is answered in favour of the Respondent and against the Petitioner. Though the order dated 17.02.2020 passed in Criminal Appeal No. 102 of 2019 on the file of learned II Additional District and Sessions Judge, Tiruvallur at Poonamallee confirming the order dated 17.09.2019 passed in C.M.P. Nos.1608 and 1607 of 2019 in D.V.C. No. 10 of 2018 on the file of learned Judicial Magistrate, Ambattur, is found proper, the maintenance amount granted by the learned Judicial Magistrate, Ambattur in CMP No. 5529 of 2019 in D.V.C. No. 10 of 2018 warrants modification.

In the result, **this Criminal Revision Case is partly allowed.** The maintenance amount granted by the learned Judicial Magistrate, Ambattur in CMP No. 5529 of 2019 in D.V.C. No. 10 of 2018 is modified and the Petitioner is directed to pay a sum of Rs.15,000/- per month as maintenance to the Respondent. The garnishee order dated 12.05.2020 passed in CMP No. 5529 of 2019 is accordingly modified. In other words, a total sum of Rs.15,000/- per month shall be deducted and paid to the Respondent every month from and out of the salary of the Petitioner herein.

<https://www.mhc.tn.gov.in/judis> The learned Judicial Magistrate, Ambattur, is directed to expeditiously



CrI.R.C.No.344 of 2021

dispose of D.V.C. No. 10 of 2018 within a period of two months from the date

of receipt of a copy of this order taking note of the stage of the said proceeding.

18.03.2025

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Internet : Yes/No

Index : Yes/No

Speaking/Non-speaking order

To

1. The Judicial Magistrate,
Ambattur.
2. The II Additional District and Sessions Judge,
Poonamallee
3. The Section Officer,
Criminal Section,
High Court of Madras.
4. The Garnishee/Manager
Pay and Accounts
Bharat Heavy Electrical Limited
High Pressure Boiler Plant
Tiruchirapally – 620 014



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CrI.R.C.No.344 of 2021



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Crl.R.C.No.344 of 2021

SATHI KUMAR SUKUMARA KURUP, J

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Order made in
Crl.R.C. No. 344 of 2021

18.03.2025