

Crl.R.C.(MD).No.65 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.04.2025

PRONOUNCED ON : 04.08.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.65 of 2023

and

CrI.M.P.(MD)No.973 of 2023

O.Sagadevan

... Petitioner/Respondent/Respondent

Vs.

Antonyammal

: Respondent/Petitioner/Petitioner

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of the Code of Criminal Procedure to call for the records and set aside the order dated 03.04.2021 passed in CrI.M.P.No.354 of 2019 in M.C.No.2 of 2012 on the file of the Family Court, Tirunelveli.

For Petitioner : Mr.I.Robert Chandra Kumar

For Respondent : Mr.T.Lenin Kumar



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ORDER

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This Criminal Revision is directed against the order passed in Cr.M.P.No. 354 of 2019 in M.C.No.2 of 2012, dated 03.04.2021, on the file of the Family court, Tirunelveli, enhancing the monthly maintenance.

2. It is not in dispute that the marriage between the petitioner and the respondent was solemnized on 22.04.1996 as per Hindu rites and customs and subsequently, there arose misunderstanding and issues between them and are living separately. It is also not in dispute that the respondent has laid maintenance claim in M.C.No.2 of 2012 before the Court of the Chief Judicial Magistrate, Tirunelveli and after enquiry, award came to be passed on 25.04.2014 directing the petitioner to pay monthly maintenance at Rs.3,000/- on or before 5th day of every succeeding English calendar month. It is also not in dispute that the respondent subsequently filed a petition in Cr.M.P.No.182 of 2016 claiming enhancement of maintenance amount from Rs.3,000/- to Rs.10,000/- and the learned Magistrate, vide order dated 23.12.2016 enhanced the maintenance amount from Rs.3,000/- to Rs.6,500/- and directed the petitioner to pay monthly maintenance at Rs.6,500/- from the date of the said petition.



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3. The respondent by alleging that she did not qualify herself with any technical skills and she is an unemployed and unable to maintain herself, that since she is suffering from iron deficiency, she has been taking treatment for anemic syndrome, that except the meagre maintenance amount, she has no source of income and that since the petitioner is drawing more than Rs.50,000/- as monthly salary, filed the above petition in Cr.M.P.No.354 of 2019 claiming enhancement from Rs.6,500/- to Rs.15,000/-.

4. The petitioner filed a counter statement stating that the respondent has two houses in Thirupanikarisalkulam and she is residing in one house and rented out the other house and is getting monthly rent of Rs.4,500/-, that the respondent is working in a private cooker company and is earning Rs.15,000/-p.m., that the respondent has been in good health and her contention that she has been taking treatment for anemic syndrome has to be proved by documents, that the petitioner after deductions is getting monthly salary of Rs.23,500/-, that the petitioner has to pay Rs.4,000/- towards rent for his house, Rs.3,000/- for his two wheeler and Rs.10,000/- for his day to day expenses and that therefore, the respondent is not entitled to get any enhancement of maintenance amount.



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5. During enquiry, the respondent examined herself as P.W.1 and summoned and examined the Senior Manager of Indian Bank, Tirunelveli Junction Branch where the petitioner was working, as P.w.2 and exhibited 5 documents as Exs.P.1 to P.5. The petitioner examined himself as R.W.1 and exhibited the copy of his driving licence as Ex.R.1. The learned Magistrate, upon considering the evidence available on record and on hearing the arguments of both sides, has passed the impugned order dated 03.04.2021 enhancing the maintenance from Rs.6,500/- to Rs.10,000/- and directed the respondent to pay the said amount from the date of filing of the petition and the said amount should be paid on or before 5th day of every English calender month and the arrears of difference in maintenance amount should be paid within one month from the date of the said order. Aggrieved by the impugned order enhancing the maintenance, the present revision came to be filed.

6. It is not in dispute that as per the orders of the competent Court, the petitioner has been paying monthly maintenance originally at Rs.3,000/- and after enhancement at Rs.6,5000/- p.m., and now the respondent is seeking enhancement to Rs.15,000/-. Though the petitioner has alleged that the



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respondent is working in a private cooker company and is getting Rs.15,000/- as her monthly income, he has not produced any iota of evidence to substantiate the same. Moreover, the petitioner has alleged that the respondent is having two houses and is getting rental income of Rs.4,500/- per month, he has not chosen to produce any materials in support of his claim. Except saying that the petitioner is working in a cooker company and is having two houses, he has not elaborated anything further. It is also not the case of the petitioner that the respondent is having necessary means or wherewithal to maintain herself subsequent to the granting of maintenance.

7. As already pointed out, the respondent has summoned and examined the Senior Manager of Indian Bank as P.W.2 and he would say that the petitioner got gross salary for the months of September 2020, October 2020 and November 2020 at Rs.64,674.72/-, Rs.63,157.72/- and Rs.64,619.04/- respectively. No doubt, the petitioner has taken a stand that after deductions, he is getting only Rs.23,500/-. The learned Magistrate, while relying on some decisions, has specifically observed that the petitioner/husband cannot be allowed to shirk his responsibility of paying maintenance to his wife, minor child and parents by



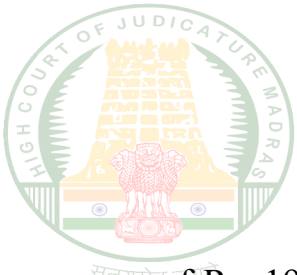
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availing loans and paying EMIs thereon, which would lead to a reduction of his carry home salary.

8. When determining monthly maintenance for the wife and children, the Court should prioritise the husband's gross salary, taking into account the statutory deductions rather than the salary relying on his net salary. This approach ensures that the wife and children's rightful maintenance is not compromised due to the husband's loan liability or other financial commitments. By considering the gross salary, the Court can make a more accurate assessment of the husband's financial capacity, thereby ensuring a fair and reasonable maintenance amount for his dependants.

9. As the learned Magistrate aptly observed, the respondent/husband cannot deprive his wife for maintenance by citing loan deductions and reduced net salary. Considering the petitioner's gross salary, deductions, cost of living, and the parties' socio-economic status, the Magistrate rightly enhanced maintenance from Rs. 6,500/- to Rs. 10,000/- per month. The learned counsel for the petitioner would submit that, having retired on April 30, 2022, with a pension



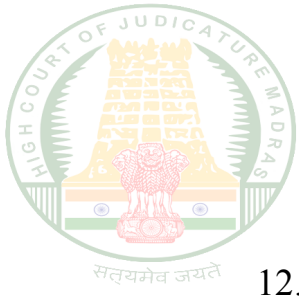
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of Rs. 19,505/- and facing a deduction of Rs. 9,000/- for a housing loan, leaves him with a meager Rs. 10,505/- for subsistence.

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10. As already pointed out, the impugned order came to be passed on 03.04.2021 and the petitioner has filed a revision in the year November 2022 along with an application to condone the delay of 176 days in preferring the revision and after condoning the delay, the present revision came to be taken on file in 2023. The petitioner has produced a copy of the letter dated 30.04.2022 sent by the Deputy General Manager / Zonal Manager, Tirunelveli Zonal Office, congratulating him on his retirement, but he has not produced the pension orders. Whatever it is, in case of change of circumstances, the petitioner can only approach the jurisdictional Court for modification if any required.

11. Considering the facts and circumstances and the material available on record, this Court has no hesitation to hold that the maintenance amount enhanced at Rs.10,000/- is very much reasonable and the same cannot said to be excessive. Consequently, this Court concludes that the Criminal Revision case is devoid of merits and the same is liable to be dismissed.



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12. In the result, the Criminal Revision Case is dismissed. Consequently,
the connected Miscellaneous Petition is also dismissed.

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

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To

The Family Court, Tirunelveli.



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K.MURALI SHANKAR, J.

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Pre-Delivery order made in

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