

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

RESERVED ON :07.07.2017

PRONOUNCED ON :.14.07.2017

**CRL.RC. No.276 of 2013
and
M.P.Nos.1 and 2 of 2013**

Varadharajan

.. Petitioner

..Vs..

1.Mrs.Mythili

2.V.Lavanya (Minor)

Represented by Mother and Natural Guardian

Tmt.V.Mythili

.. Respondents

Prayer:- Criminal Revision Petition filed under Section 397 and 401 Cr.P.C., against the order of the Learned II Additional Principal Family Court Judge at Madras in M.C.No.114 of 2009 dated 23.11.2012 partly allowing the petition and directed the petitioner/respondent to pay a sum of Rs.3,500/- per month each respondent/petitioner by its order dated 17.05.2010.

For Petitioner :Mr.C.D.Johnson

For Respondent :Mr.J.Saravanel

ORDER

This Criminal Revision Petition has been filed, against the order of the Learned II Additional Principal Family Court Judge at Madras in

M.C.No.114 of 2009 dated 23.11.2012 partly allowing the petition and directed the petitioner/respondent to pay a sum of Rs.3,500/- per month each respondent/petitioner by its order dated 17.05.2010.

2. The husband is a Revision Petitioner. The first respondent is the wife of the revision petitioner and the second respondent is the daughter of the petitioner and the respondent.

3. This revision has been filed by the petitioner/husband, challenging the order passed by the 3rd Additional Principal Judge,i/c of II Additional Principal Family Court, Chennai in M.C.No.114 of 2009 dated 23.11.2012 wherein the Revision Petitioner were directed to pay a sum of Rs.3,500/- per month to each petitioner namely wife and the children from the date of filling of the petition.

4. The admitted factual matrix of the case is that, the marriage between the Revision Petitioner and the first respondent herein took place on 07.02.2001 at Star Mahal, Kuthalam, Mayiladuthurai, Nagapattinam District and out of the legal wedlock, a female child was born on 08.02.2003 (the second respondent herein). As the petitioner was said to have been neglected the respondent herein, the wife has claimed maintenance under Section 125 Cr.P.C for herself and the daughter before the Principal Family Court, Chennai, alleging that the Revision Petitioner's husband is working as a

Manager in TVS at Trichy and his monthly income about Rs.45,000/-. The Revision Petitioner who is a respondent before the trial Court filed a counter stating that he is neither working in TVS company nor earning Rs.45,000/- as stated by the wife, but is only working in a private company and is getting a salary of Rs.8,000/- and also he has to maintain his father aged 75 years who is in ailment. The petitioner/wife was examined herself as P.W.1 and marked as Exs.P1 to P3 on her side. While the Revision Petitioner/husband was examined himself as R.W.1 and marked as Exhibits R1 to R3.

5. The learned counsel for the petitioner has submitted that, the maintenance awarded by the trial Court is excess; it is not in consonance with the proved salary of the revision petitioner-husband.

6. The learned counsel for the respondent made a submission in support of the case.

7. The short point that need to be addressed in this case is as to whether award of maintenance is exorbitant as claimed by the revision petitioner and proved income. The revision petitioner/husband has filed Ex.R3, Salary Certificate which was discussed by the trial Court. The respondent is working at Raja Rajan and sons, an Authorized Dealer for Mahindra and Mahindra Limited and earning a salary of Rs.12,000/- per month and after deduction, his salary is Rs.10,350/- and marked as

Exhibit.R3. The trial Court has also taken note of the fact that the 1st petitioner/wife is a Post Graduate and she is working at Sankara Matriculation School and also taking tuitions to students of various classes since she is handling Physics subject which is a rare subject and she is earning substantial income however the same is not enough to maintain her and her minor child.

8.This Court, is in agreement of the finding rendered by the trial Court that the 1st respondent/wife is working a Sankara Matriculation School and also taking tuitions and income arrived therein is not sufficient. However, this Court also finds that the proved income of the Revision Petitioner/husband is only Rs.12,000/- per month and after deduction, the revision petitioner/husband take home salary is Rs.10,350/- and admittedly, the Revision Petitioner/husband is also bound to maintain his ailing father, which fact cannot be ignored.

9.At this juncture, it is to be stated that the trial are not to treat the husband like "armless soldier" and pass the maintenance award in on Mechanical manner. While, arriving at quantum of maintenance for the wife and children (in maintenance proceedings), it is stated that Family Court (Judicial Magistrate Court dealing with the issue) as to take the entirety of the circumstances of the financial liability of the husband. Admittedly, while arriving at the maintenance award for wife and children, the attitude of the trial Court especially, the Family Court awarding amount more than 2/3rd

proved income is deprecated. Furthermore, it is to be stated that the fact that a husband who is a son to his father is liable to maintain the aged parents (in many case senior citizens) cannot be brushed aside lightly. Besides, the moral obligation, there is a statutory obligation cast upon the every son to maintain the parents which is also falls under Section 125 of the CrPC and therefore, the trial Court ought to have weighed the entire circumstances as placed before the Court and to have reasonable assessment financial burden on the shoulder of the husband. Thus, while awarding the maintenance in favour of wife and children the Court should take into consideration his responsibility to look after the aged old parents, since the husband has been fastened with statutory objections to look after and maintain not only his wife but also his parents under the very same Section 125 of CrPC.

10. By the award under challenge, the trial Court has awarded RS.3,500/- for each petitioners by totalling Rs.7,000/- leaving only 3,350/- to the husband for the maintenance of himself as well as his ailing father. The situation of the present petition case is analogous to a person caught between the Devil and the Deep Sea. since under the law, he has to maintain the wife and children under Section 125 of the CrPC and he has also to maintain his father under very same section, failing which, he has to face the proceedings, if initiated by the parents of the husband. With the above observations, let us consider the case in hand.

11. Considering the admitted factual position that Revision Petitioner has also to maintain ailing father, the award of the trial Court is found to be excess and accordingly it is modified as Rs.2,500/- instead of Rs.3,500/- for the wife and the child, as the husband has to maintain himself and his father and hence, maintenance award passed by the trial Court in M.C.No.114 of 2009 dated 23.11.2012 stands modified to the above limited extent.

12. In the result, this Criminal Revision Petition is allowed-in-part. Consequently, connected Miscellaneous Petitions are closed.

14.07.2017

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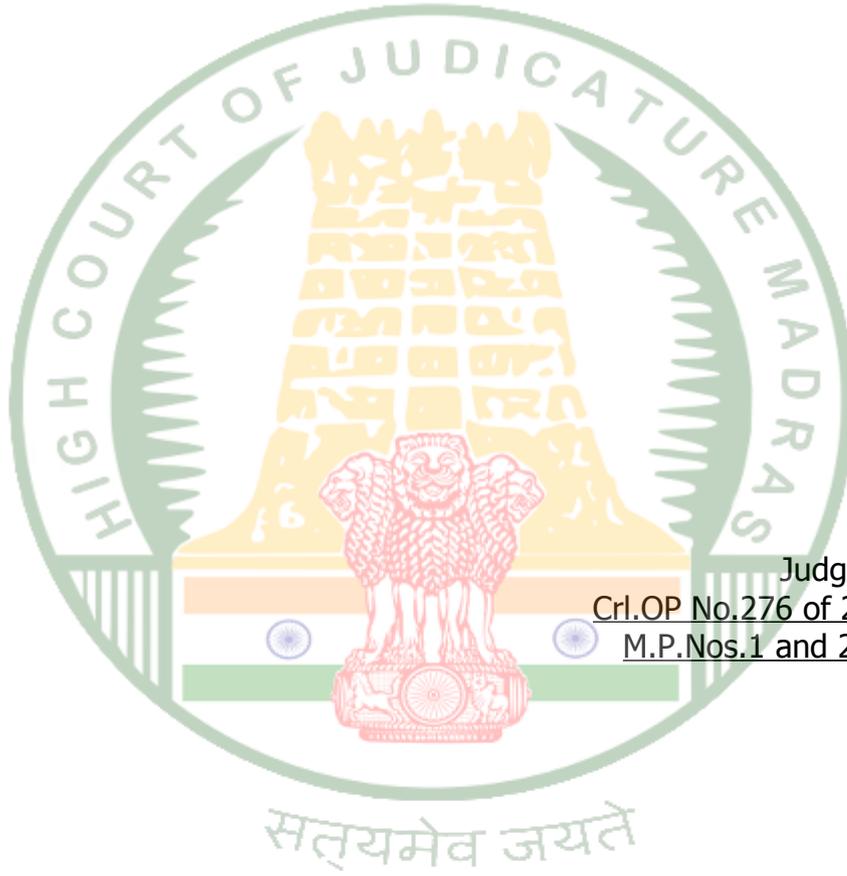
To

1. The II Additional Principal Family Court Judge, Madras
2. The Public Prosecutor,
High Court, Madras.

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RMT.TEEKAA RAMAN,J.,

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Judgment in
CrI.OP No.276 of 2013 and
M.P.Nos.1 and 2 of 2013

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