
(2017) 12 MAD CK 0037

MADRAS HIGH COURT

Case No: 694 of 2017

R.Kalarani & Anr

APPELLANT

Vs

Jeeva Ashok

RESPONDENT

Date of Decision: Dec. 22, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 125, Section 127 - Order for maintenance of wives, children and parents - Alteration In allowance

Hon'ble Judges: A.D.Jagadish Chandira

Bench: SINGLE BENCH

Advocate: A.D.Jagadish Chandira

Judgement

1. Since both the criminal revision petitions have been filed challenging the very same order and the parties being one and the same, they have been

clubbed, heard together and are being disposed of by this common order.

2. Being aggrieved by the order of the Family Court Dindigul dated 24.08.2016, made in Cr.M.P.No.75 of 2014 in M.C.No.63 of 2008, stating

that the amount of maintenance awarded is not sufficient, the wife had filed a petition in CrI.R.C (MD) No.246 of 2017 for enhancement of

maintenance for herself and her daughter.

3. Being aggrieved by the above order of the Family Court Dindigul, contending that the maintenance awarded to the wife and daughter was

exorbitant the husband had filed a petition in CrI.R.C (MD) No.694 of 2017 seeking reduction of monthly maintenance.

4. For the sake of convenience the parties are referred as per the ranking in Criminal M.P.No.75 of 2014 in M.C.No.63 of 2008 on the file of the

Family Court, Dindigul as 1st petitioner/wife, 2nd petitioner/daughter and respondent/husband.

5. The brief facts of the case are: The marriage between the first petitioner /wife and the respondent/husband was solemnized on 26.04.2004 at

Dindigul and thereafter the same got to be registered at the Office of the Territorial Sub-Registrar, Dindigul, Dindigul District. Out of the wedlock a

female child/second petitioner was born and the child is now in the custody of the first petitioner. Due to marital discord the respondent filed a case

for grant of divorce in H.M.O.P.No. 236 of 2008 before the Sub Court concerned on the ground of adultery. However, the H.M.O.P., was

dismissed had filed C.M.A.No.35 of 2011 before the District Court, Dindigul challenging the order of dismissal of the petition for divorce and that

the C.M.A., had also been dismissed. The petitioner/wife had originally filed a petition before the learned Judicial Magistrate, Dindigul claiming

maintenance for herself and her minor daughter during 2008 and the court by order dated 31.08.2010 directed the respondent to pay a sum of

Rs.1,000/- per month to each petitioners. Challenging the order of maintenance the respondent/husband filed Crl.R.P 36/2010 and the

petitioner/wife filed Crl.R.P 1/2011 before the Prl. Sessions Court Dindigul and by common order dated 21.04.2011, the Principal Sessions

Court, Dindigul dismissed Crl.R.P. 36 of 2010 and partly allowed Crl.R.P.No.1 of 2011 and enhanced the monthly maintenance of the first

petitioner/wife to Rs.2,500/- and the monthly maintenance of the second petitioner/daughter to Rs. 3,500/-. Against the said order the respondent

had filed Crl.R.C.(MD) No.459 of 2011 before this Court and this Court by order dated 30.07.2013 disposed the revision with the direction to

both parties to produce documents and adduce evidence before the trial Court regarding their respective incomes and thereby directed the Court

below to refix the quantum of maintenance after hearing both sides. Thereafter, petitioner/wife had filed CrI.M.P.No.75 of 2014 before the Family

Court, Dindigul, under Section 127 Cr.P.C., claiming Rs. 10,000/- per month towards maintenance each for herself and the second

petitioner/daughter. In the petition, the stated that she was working as an Account in Surva Siksha Abiyan for consolidated pay of Rs.6,000/- and

that her job was temporary one which was subjected to be terminated any time and that her husband the respondent was working as a

Government Teacher earning Rs. 34,875/- and that she being unable to maintain herself and her daughter, prayed for enhancing the maintenance at

the rate of Rs. 10,000/- each for herself and her daughter. The respondent/husband filed a counter stating that the petitioner/wife was earning an

amount of Rs.6,000/- and that she being able to maintain herself was disqualified from claiming maintenance under Section 125 Cr.P.C. Further,

he had stated that his take home income was only Rs. 33,565/- and that since the Hon"ble High Court in CrI.R.C., had not altered the maintenance

amount and that the High Court had directed both parties to produce documents towards proof of income and decide the quantum of maintenance

and thereby submitted that the petition filed under Section 127 Cr.P.C., for enhancement of maintenance amount is not maintainable.

6. During the proceedings the first petitioner/wife examined herself as P.W.1 and she had marked Exs.P1 to P11 on her side. The respondent had

examined himself as R.W.1, his father Selvam as R.W. 2 and the Office staff of the Addl. C.E.O as R.W.3. The authorisation given to R.W-2 was

marked as Exs.X1 and the consolidated pay details of the petitioner / wife for the month of May 2016 was marked

7. The court below after hearing both sides and taking into consideration the consolidated monthly income of Rs.6,000/- received by the first

petitioner and the amount of Rs.47,709/- as the income of the respondent/husband as per Ex.P11 and passed an order fixing the amount of

maintenance at Rs.2,500/- for the first petitioner/wife and Rs.6,000/- for the second petitioner/daughter and the respondent/husband was directed

to pay the arrears within three months and he was also directed to pay the arrears of maintenance and future maintenance of the second petitioner

to her mother first petitioner. This is order which is now challenged by both parties before this Hon"ble Court.

8. Heard Mr.A.Jayaramachandran, learned counsel for the wife and Mr.R.R.Kannan, learned counsel for the husband.

9. The learned counsel for the petitioner/wife contended that the Family Court erred in not enhancing the maintenance of the wife and daughter

taking into consideration the status of the husband and the income earned by him. He further contended that as on date the husband is earning the

amount of Rs.53,459/- per month that that he is a teacher working in Government School and that having neglected to maintain his wife and

daughter the Family Court ought to have awarded enhanced maintenance as prayed for and contended that the wife besides taking care of herself

was also taking care and that the present job in Surva Shiksha Abiyan is only a temporary job and it is only on a consolidated pay and that she

may be terminated from the above work at any time and thereby contended that the Family Court erred in not awarding the enhanced amount. The

counsel contended that the Family Court failed to take into consideration the Judgments of the Apex Court with regard to the maintenance and

submitted that the Family Court erred in taking into consideration the income of the wife and thereby refusing to enhance the maintenance to the

wife. The test to be decided is whether the wife was in a position to maintain herself in the way she was used to be in the place of her husband and

thereby the court ought to have taken note of the income and status of the husband and comparatively considered the status of the wife which was

not on par with the status of her husband and thereby ought to have enhanced the maintenance amount. The counsel for the petitioner contended

that as per the salary drawn on July 2017, the income of the husband was Rs. 52,806/- and that the Family Court ought to have enhanced the

amount in commensurate with the monthly income of the respondent/husband rather than considering the income of the wife which was only on a

temporary basis.

10. In support of his contention the learned counsel for the petitioner relied on the decisions of the Hon"ble Apex Court in Chaturbhuj vs. Sita Bai

reported in (AIR Sunita Kachwaha & Ors. vs. Anil Kachwaha reported in (AIR 2015 SC 554) contending that merely because the wife was

earning something it would not be a ground to reject her claim for maintenance and that the test to be decided by the court is whether the wife is in

a position to maintain herself in the way she used to be in the place of her husband.

11. The learned counsel for the respondent vehemently opposed the plea of the first petitioner stating that she is not entitled to any maintenance for

the reason that she has refused to live with her husband without any reasonable cause and thereby she is not entitled to maintenance as per Section

125 (4) Cr.P.C. He further contended that the wife is getting consolidated pay of Rs.6000/- per month and that the salary of the husband is only

Rs.52,806/- as on July 2017 and that his take home salary after deduction towards loans is only Rs.32,393/-. and that the husband is taking care

of his aged parents and the Family Court erred in fixing the quantum of maintenance at Rs.2,500/- per month to the first petitioner and Rs. 6,000/-

per month to the second petitioner/daughter. He further contended that the respondent/husband had availed loans for settling the arrears amount of

maintenance and that very recently he had also paid a sum of Rs.3.00 lakhs towards the arrears of maintenance. He further contended that he was

always willing to live along with his wife whereas she has refused to join him. Further, contended that the wife had filed several vexatious and false

cases against the husband and her family members and that he had been forced to run between courts and that even after an acquittal by the trial

court the wife is witch hunting him by filing appeal against acquittal and thereby contended that the wife is not entitled to maintenance.

12. In reply to the above arguments of the learned counsel for the respondent/husband Mr.A.Jayaramachandran, learned counsel for the first

petitioner/wife vehemently contended that it was the husband who invited the litigation and false allegations of adultery were raised against the

petitioner/wife and moreover, the respondent/husband had also committed fraud on the court through one of his relatives who was working in the

court and attempted to show as if court summons were served on a fictitious person to be the 2nd respondent in the Divorce proceedings and

thereby the petitioner/wife was constrained to initiate proceedings against him. The counsel further contended that the husband having raised a false

and vague serious allegations of adultery cannot now fault with the wife for not joining him and that the divorce petition filed by the husband on the

ground of adultery had been dismissed and the appeal has also been dismissed. In such circumstances, there was sufficient reason and grounds for

the wife to refuse to live with him. Moreover, the wife had been subjected to severe cruelty she was forced to give a criminal complaint against her

husband and that having forced her into four corners, the husband cannot now find fault with her in taking appropriate legal recourse against him for

the fault committed by him. The counsel for the petitioner/wife further contended that as on today, the monthly income of the respondent is

Rs.53,459/- per month and even as per the records submitted by him he is contributing Rs.8,000/- towards Provident Fund and he is purposely

and wilfully avoiding payment of maintenance to his wife. Whereas the wife is suffering without permanent income and that she has to maintain

herself and her daughter and her educational expenses, rent for dwelling house and in the present day cost of living in comparison to the amount

earned by the husband and the life style of the husband, she and her daughter are in poor state of living and prayed for enhancement of

maintenance considering the plight of the destitute woman and her child.

13. At this juncture with regard to the contention of the counsel for the respondent/husband that the wife had refused to live with him without any

reasonable cause and that he was willing and ready to live with her, it is worthwhile to refer to an earlier judgment of this Court in *Kandasamy*

Moopan vs. Angmmal reported in AIR 1960 Madras 348, wherein this Court has held that a deliberate attribution of immorality of a wife must be

considered as legal cruelty entitling the wife to live separately and claim maintenance. held that the last minute offers to take back the wife are open

to scepticism as they are put forward with no other object than to ward off applications arising in civil and criminal proceedings for supporting wife

14. The Family Court in its order dated 24.08.2016 made in Cr.M.P.No.75 of 2014 in M.C.No.63 of 2008, while passing the order for

maintenance had taken into consideration the salary of the wife and the monthly salary of the husband and awarded maintenance at Rs.2,500/- to

the wife and Rs.6,000/- to the daughter. In the judgment reported in AIR 2015 SC 554 (*Sunita Kachwaha & Ors. vs. Anil Kachwaha*) the

Hon"ble Apex Court has held that where the wife states she had great hardships in maintaining herself and the daughters, while her husband's

economic condition is quite good the wife would be entitled to maintenance. In the very same judgment it has also been held that merely because

the wife was earning something it would not be a ground to reject her claim for maintenance.

15. In *Chaturbhuj vs. Sita Bai* reported in (AIR 2008 SC 530) = 2008 2 SCC 316, it has been held that Section 125 is a measure of social justice

and is especially enacted to protect women and children, para 5 to 8 of the judgment is extracted hereunder:

5. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling

those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase

unable to maintain herself"" in the instant case would mean that means available to the deserted wife while she was living with her

husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 Cr.P.C. is a

measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh

Chander Kaushal v. Mrs. Veena Kaushal and Ors. (AIR 1978 SC 1807) falls within constitutional sweep of Article 15(3) reinforced

by Article 39 of the Constitution of India, 1950 (in short the "Constitution"). It is meant to achieve a social purpose. The object is to

prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It

gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to

maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat and Ors. (2005 (2)

Supreme 503).

6. Under the law the burden is placed in the first place upon the wife to show that the means of her husband are sufficient. In the

instant case there is no dispute that the appellant has the requisite means.

7. But there is an inseparable condition which has also to be satisfied that the wife was unable to maintain herself. These two

conditions are in addition to the requirement that the husband must have neglected or refused to maintain his wife. It has to be

established that the wife was unable to maintain herself. The appellant has placed material to show that the respondent-wife was

earning some income. That is not sufficient to rule out application of Section 125 Cr.P.C. It has to be established that with the amount

she earned the respondent-wife was able to maintain herself.

8. In an illustrative case where wife was surviving by begging, would not amount to her ability to maintain herself. It can also be not

said that the wife has been capable of earning but she was not making an effort to earn. Whether the deserted wife was unable to

maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient

she can claim maintenance under Section 125 Cr.P.C. The test is whether the wife is in a position to maintain herself in the way she

was used to in the place of her husband. In Bhagwan v. Kamla Devi (AIR 1975 SC 83) it was observed that the wife should be in a

position to maintain standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The

expression ""unable to maintain herself"" does not mean that the wife must be absolutely destitute before she can apply for maintenance

under Section 125 Cr.P.C.

16. Heard both sides Counsels and analysed the judgments of the Honble Apex Court cited supra. In reference to the judgments cited above it is

made clear that when the personal income of the wife is insufficient she can claim maintenance under Section 125 Cr.P.C., and next to fix the

quantum of maintenance, the test is whether the wife is in a position to maintain herself in the way she was used to be in the place of her husband.

17. Here is a case of a woman with a temporary job taking care of her minor daughter seeking maintenance from her husband who is better placed

than them. The woman and her daughter have to take care of their boarding, lodging, medical, clothing and also the educational expenses of her

daughter. As on today (the date of hearing), as admitted by both the counsels the consolidated monthly pay for the wife is Rs.9,116/- and the

salary of the husband is Rs. 53,459/- per month. Taking into consideration the cost of living index as on today and also the fact that the minor

daughter is being taken care of by wife, the Court finds the amount of maintenance awarded by the Family Court is low and not consistent with the

income of the husband at Rs.53,459/- per month. The Family Court erred in not enhancing the monthly maintenance of the wife and the daughter.

18. This Court finds that when the husband Rs.8,000/- per month towards his contribution for Provident Fund, there is no reason for him deny

enhancement of maintenance to his wife and child which would be consistent with his standard of living.

19. In such circumstances this Court taking into consideration the consolidated income of the wife which is also temporary in nature and the income

of the respondent husband this Court finds that it would be just and appropriate that the maintenance awarded to the wife is enhanced to

Rs.4,000/- per month from Rs.2,500/- per month and the maintenance awarded to the minor child is enhanced to Rs.7,500/- per month from

Rs.6,000/- per month.

20. In the result, CrI.R.C.(MD) No.246 of 2017 filed by the petitioners/wife and daughter is partly allowed and CrI.R.C.(MD)No. 694 of 2017

filed by the respondent/husband is dismissed and thereby the order, dated 24.08.2016, made in Cr.M.P.No.75 of 2014 in M.C.No.63 of 2008,

by the Family Court, Dindigul, is modified and the maintenance awarded to the wife is enhanced to Rs.4,000/- per month and the maintenance to

the minor child is enhanced to Rs. 7,500/- per month.

21. It is made clear that in the event of any change of circumstances in the status of the parties, they are appropriate petition for alteration of

allowances under Section 127 of Criminal Procedure Code, before the Family Court which has originally passed the maintenance order. The

petitioners are entitled to claim the revised amount of maintenance from the date of order of the Family Court, Dindigul viz., 24.08.2016 passed in

Cr.M.P.No.75 of 2014 in M.C.No.63 of 2008. Three months time is given to the respondent/husband to pay the arrears of enhanced

maintenance amount.