

**Alagappan Vs. Thilagam**

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**Court :** Chennai

**Decided On :** Apr-25-2000

**Reported in :** 2000CriLJ3239

**Judge :** I. David Christian, J.

**Acts :** Code of Criminal Procedure (CrPC) , 1974 - Sections 125, 127, 482 and 488

**Appeal No. :** Cr. O.P. No. 708 of 1999

**Appellant :** Alagappan

**Respondent :** Thilagam

**Advocate for Def. :** K.S. Gurumoorthy, Adv.

**Advocate for Pet/Ap. :** U.M. Ravichandran, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**I. David Christian, J.**

1. This petition is filed under Section 482, Cr.P.C. praying this Court to set aside the order passed in CrI. R.C. No. 4 of 1998, on the file of the Principal District

Sessions Judge, Pudukottai as per which the order passed by the Judicial Magistrate No. 2, Pudukottai in Cri. M.P. No. 3340 of 1996 was confirmed.

2. The petitioner Alagappan is a resident of Narimedu in Pudukkottai. His wife Thilagam filed M.C. No. 14 of 1994 before the Judicial Magistrate No. II, Pudukkottai praying for maintenance under Section 125, Cr.P.C. The petitioner who was impleaded as respondent in M.C. entered appearance and during pendency of the said petition, both the petitioner and his wife entered into a compromise on 15-2-1995 as per which the petitioner agreed to pay a sum of Rs. 300/- as maintenance to the wife, the respondent in this petition and the learned Magistrate has passed an order dated 15-2-1995 directing the petitioner to pay the said amount.

3. While so, in the year 1996 the respondent, namely the wife, filed a petition in M.C. No. 14 of 1994 for enhancement of monthly maintenance from Rs. 300/- to Rs. 500/- in view of the changed circumstances under Section 127, Cr.P.C. and initially the petition was ordered ex parte, but subsequently the ex parte order was set aside and after allowing the parties to adduce evidence in support of their rival claims, the learned Judicial Magistrate No. II, Pudukottai passed an order dated 28-3-1996 enhancing the maintenance amount due to the wife from Rs. 300/- to Rs. 500/-. This was passed in Cri. M.P. No. 3340 of 1996.

4. Aggrieved at the enhancement of compensation; the petitioner preferred Cri. R.C. No. 4 of 1998, before the Principal District Sessions Judge, Pudukottai and by the impugned order, the Principal District Sessions Judge, Pudukottai confirmed the order passed by the learned Magistrate granting an enhancement of Rs. 200/- from the original order which was passed for Rs. 300/-.

5. Aggrieved at the said order and invoking the inherent jurisdiction of this Court, the petitioner-husband has filed this petition under Section 482, Cr.P.C. stating that the order passed by the learned Magistrate and confirmed by the learned Sessions Judge is against the law, that the petition for enhancement of maintenance under Section 127, Cr.P.C. itself is not maintainable in view of the fact that the order granting maintenance in M.C. No. 14 of 1994 was an order passed on compromise and not on merits.

6. The point for consideration is as to whether the order passed in Crl. R.C. No. 4 of 1998 by the learned Sessions Judge is liable to be set aside for all or any of the reasons advanced on behalf of the petitioner?

7. The point :-

Petitioner Alagappan is the husband of Thilagam and they are also close relations inasmuch as Alagappan is the maternal aunt's son of the respondent, Thilagam. The marriage between Alagappan and Thilagam and its subsistence is not in dispute. That they are living separately for many years is also not disputed by the petitioner. In fact the wife Thilagam complaining of ill-treatment, cruelty and desertion filed M.C. No. 14 of 1994 before the Judicial Magistrate No. II, Pudukottai. The petitioner entered appearance and contested the claim. The claim of the wife was based on the allegations of ill-treatment, cruelty and desertion. At that time the husband was working as a B.T. Assistant, perhaps Headmaster in a school run by the Government. Even though the petitioner and the respondent were living separately and since they are relations and perhaps due to the intervention of the elders, a compromise was effected and Alagappan made an endorsement in M.C. No. 14 of 1994 to the effect that he was prepared to pay Rs. 300/- as maintenance for his wife Thilagam every month. This was accepted by the wife and an order was also passed by the Judicial Magistrate No. II, Pudukottai, in M.C. No. 14/94 on 15-2-1995 as per which the petitioner was directed to pay a sum of Rs. 300/-per month as maintenance to the wife Thilagam and this was to take effect from the date of the maintenance petition.

8. The petitioner was paying the amount ordered by the learned Magistrate and two years later, in 1996, the wife Thilagam filed Crl. M.P. No. 3340 of 1996 under Section 127, Cr.P.C. and prayed for enhancement of maintenance narrating the changed circumstances and justifying the enhancement sought for by her. It was alleged by the petitioner that a sum of Rs. 300/- which she agreed to receive earlier is not enough to maintain herself, that cost of living has arisen many fold, that the price of articles have increased, that the petitioner has been also promoted as Assistant District Educational Officer earning a sum of Rs. 6,000/-per month. Therefore, she is entitled for enhanced maintenance.

The petitioner examined herself in support of the claim of enhancement and the respondent did not dispute the fact that he has been promoted in the meantime as Assistant District Educational Officer. However, he contested the claim of the wife that he was getting a sum of Rs. 6,000/- as salary.

9. The wife is entitled for maintenance at the hands of her husband and in case the wife is forced to live separately, if she had a just and reasonable cause to live so, she is entitled to ask for maintenance under Section 125, Cr.P.C. The husband is expected to maintain the wife in such conditions as befitting his own status. A person getting a salary of Rs. 6,000/-per month can definitely be expected to pay at least a sum of Rs. 500/- towards maintenance of his wife. Objections raised by the husband for enhancement were on the ground that he has to support his aged parents and that he is a heart patient requiring constant medical treatment. Besides it was alleged by the petitioner that she was possessed of one acre of land and she is also dealing in money-lending business. Assuming for a moment, one acre of land is possessed by the wife, it will be hardly sufficient to maintain as if in style befitting the status of her husband in view of the fact that she herself is not an agricultural coolie and she must depend upon hired labourer. Moreover, it is claimed by the wife that one acre which was given by her brother was also not available with her when she filed the petition for enhancement of maintenance. There is absolutely nothing to support the claim of the petitioner that the wife was dealing in money-lending business.

10. As already stated while the petitioner admitted that he has been promoted to Assistant District Educational Officer, he only orally denied receiving of a sum of Rs. 6,000/- as monthly salary. If the petitioner is not getting a sum of Rs. 6,000/- as salary, he could have easily proved the same by producing a salary certificate from the authority competent to give the same. The mere fact that the husband failed to produce any such records is enough to draw an inference that he is getting more than Rs. 6,000/- as salary as alleged by the wife. The order of enhancement was passed on 9-12-1997 when the 5th Pay Commission Report was received and implemented by the Government. Therefore, as observed by the learned Magistrate, it stands to common sense and reason that the petitioner who is presently employed as Assistant District Educational Officer will be drawing

more than Rs. 9,000/- as salary. Even when the Crl. M.P. was filed, he must have been drawing more than Rs. 6,000/- and, therefore, taking into consideration of his status, the wife has only prayed for enhancement of Rs. 200/- at the rate of Rs. 500/- per month. Therefore, both the learned Magistrate and the learned Sessions Judge have correctly taken into consideration the changed circumstances and justified the claim of enhancement made by the wife. So, on question of facts and merits, the order of the learned Magistrate ordering enhanced maintenance from Rs. 300/- to Rs. 500/- cannot be found fault with.

11. It is mainly contended by the petitioner that since an order under Section 125, Cr.P.C. was passed on compromise, the petition under Section 127, Cr.P.C. is not maintainable and the petitioner if aggrieved ought to have filed a suit for maintenance in the Civil Court and no petition under Section 127, Cr.P.C. will lie.

Learned counsel appearing for the petitioner has relied upon a ruling reported in : AIR1953 Mad549 (Krishnappa Chettiar v. Sivagami Achi).

That was a case where the husband and wife has entered into an agreement or arrangement as per which they decided to live separately and the wife has agreed to take a specified sum for maintenance. Separation was brought about because the husband insisted upon marrying another woman and living with her. The arrangement was made in 1948 and an agreement was entered between the husband and wife in writing. Long after that when the husband was not able to pay the amount, when he had a downfall in his business, he has failed to pay the amount and the wife filed a petition under Section 488, Cr.P.C. which was the relevant section dealing with maintenance in the old Criminal Procedure Code. It was held in that case by a single Judge of this Court that there can be no doubt that a Magistrate purporting to act under this section cannot assume the functions of a civil Court and give judgment in accordance with a bond evidencing a compromise entered into between a husband and a wife. Where a claim for maintenance is amicably settled by the parties, the Magistrate should simply dismiss the petition, if pending before him.

Relying upon earlier decisions and a decision of the Madras High Court in Crl. R.C. No. 489 of 1903 it was held that a husband and wife who have come to

settlement outside the Court whereby the husband consented to maintain the wife, the Magistrate had no longer any power to order under Section 488, Cr.P.C. and it can no longer be said that the husband is refusing to maintain the wife. In fact towards the end of the judgment in final paragraph, His Lordship has held that in this case, if the wife was dissatisfied with the miserable pittance secured for her under Ex. D. 1 there are courses open to 'her like filing a civil suit or she can ask for enhanced maintenance on account of the rise in the cost of living or she can file a suit on the ground that Ex. D. 1 was executed by her without fully understanding its import and that it is an invalid document.

Therefore, this ruling is no authority to held that in a petition filed under Section 125, Cr.P.C. if an amount has been ordered to pay to the wife as maintenance in terms of the compromise entered between the parties, the wife is precluded from filing a petition under Section 127, Cr.P.C. In fact the observation made by the learned Judge towards the end of the judgment itself would indicate that in spite of the compromise, the wife can still file a petition under Section 127, Cr. P.C. for enhancement of maintenance and the Court can be taken into consideration the changed circumstances or justification of the claim and pass orders according to merits.

12. Learned counsel appearing for the petitioner also drew my attention to a ruling reported in 1989 Cri LJ 2416 (Kamatham Venkatamma v. Kamatham Buruju Ramanna), judgment of a single Judge of Andhra Pradesh High Court.

It was held therein that where a private settlement between the parties was arrived at as regards future maintenance, a subsequent petition for enhancement of maintenance could not be filed before Criminal Court, either under Section 125 or Section 127, Cr.P.C. The remedy lies in Civil Court. The compromise that has been arrived at by both the parties cannot be said to be a compromise that has been made under Section 125, Cr.P.C. The compromise arrived at between the parties is outside the purview of the Criminal Court which does not form part of the decree passed by any Court. If the original order has been passed on the basis of a compromise, a petition can be filed for enhancement under Section 127, Cr.P.C. The petition under Section 127, Cr.P.C. for enhancement in the amount of

maintenance granted under Section 125, Cr.P.C. has to be filed before the Court which passed the original order under that Section.

Since in that case there was no order passed under Section 125, Cr.P.C. by the Criminal Court, the petition filed for enhancement was negated because there was agreement between the parties independent of any proceedings under Section 125, Cr.P.C, wherein the parties have agreed with regard to quantum of future maintenance. In fact in that ruling itself, the learned Judge has observed that enhancement petition will lie in case where an order has been passed under Section 125, Cr. P.C. even though in terms of compromise agreed to by the parties.

Therefore, two rulings cited by the learned counsel for the petitioner is not helpful to him and on the contrary, it only shows that a petition for enhancement under Section 127, Cr.P.C. is maintainable notwithstanding the order passed under Section 125, Cr.P.C, being one of compromise.

13. In fact Maheswaran, J. in Padmanabhan v. Bama has clearly held that there is nothing in 127, Cr.P.C. which takes away the jurisdiction of the Court to modify its own order even though it is passed on the basis of a compromise. The words 'without prejudice to the contentions of the parties' will not alter the situation. If there has been change in the circumstances of any person receiving or paying a monthly maintenance under Section 125, Cr.P.C, it is always open to the Court to alter the amount under Section 127, Cr.P.C. That means, this Section would apply both to the husband and to the wife. As it has been held that the Magistrate has jurisdiction to enforce the order passed under Section 125, Cr.P.C. he would have jurisdiction to entertain an application under Section 127, Cr.P.C. and deal with it in accordance with law. It is within the competence of the Magistrate to accept a compromise made by the parties and to pass an order under Section 125, Cr.P.C. giving effect to the terms agreed between the parties as to the rate of maintenance. As held in : AIR1950 All454 , after a compromise has been arrived at, the Court has still to pass an order and if it passes an order in terms of the compromise, it is that order and not the compromise that will be enforced subsequently. Therefore, the petition under Section 127, Cr.P.C. is perfectly

maintainable.

14. In this case also the wife filed M.C No. 14 of 1994 and only during pendency, a compromise petition was filed signed by both the petitioner and the respondent agreeing to pay and receive Rs. 300/- as monthly maintenance. This compromise was accepted by the Magistrate who passed a separate order directing payment of maintenance to the respondent by the petitioner at the rate of Rs. 300/- per month as agreed to by the parties. So, it is this order passed by the learned Magistrate which has become enforceable. Therefore, even though the order was on the basis of a compromise, it is liable to be modified under Section 127, Cr.P.C. provided there is change of circumstances which warrant increase or decrease in the amount ordered as the case may be. The wife subsequently has established that circumstances have changed, that the earlier order of maintenance will be hardly sufficient to maintain her in a status befitting the status of her husband and, therefore, justified and claimed maintenance. Therefore, the husband who is earning more than Rs. 6,000/- per month has been ordered to pay maintenance of Rs. 500/- and this can never be called as excessive and the enhancement is fully justified. Therefore, I do not find any illegality or perversity in the order passed by the learned Judicial Magistrate, which has been confirmed in Revision by the learned Principal District Sessions Judge, Pudukkottai. The petition lacks in merits and, therefore, it is liable to be dismissed.

15. In the result, CrI. O.P. No. 708 of 1999 fails and the same is dismissed.

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