

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.07.2015

DELIVERED ON : 27.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P.No.30452 of 2014
and M.P.Nos.1 of 2014 and 1 of 2015

K.Paulsamy

.. Petitioner

VS

Moganavalli

.. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in M.C.No.46 of 2011, filed by Moganavalli, the respondent herein and pending on the file of the Judicial Magistrate Court at Tambaram and quash the same.

For Petitioner :Mr.A.E.Chelliah, Senior Counsel
for Mr.R.Prathaban
For Respondent :Mr.O.R.Tiwari

ORDER

This petition has been filed to call for the records in M.C.No.46 of 2011, filed by Moganavalli, the respondent herein and pending on the file of the Judicial Magistrate Court at Tambaram and quash the same.

2. Mr.A.E.Chelliah, learned Senior Counsel appearing for the petitioner in his inimitable fairness, has placed before this Court the entire concatenation of events, by furnishing all the records in seriatim together with dates and events, which has made the work of this Court little easier.

3. For the sake of convenience, the parties will be referred to by their name.

4. Paulsamy [petitioner] a widower, married Moganavalli [respondent] on 23.04.2008 and they have one child through the wedlock. It is Paulsamy's case that, he married Moganavalli on condition that, she should look after the children born to him through his first wife. Paulsamy was about 57 years old when he married Moganavalli, who was about 32 years old, and almost half

his age. Paulsamy suspected the fidelity of Moganavalli, on account of which their family life ran into rough weather, resulting in Moganavalli being driven out from the matrimonial home on 20.10.2011 *. Paulsamy filed HMOP No.470 of 2011 on 04.11.2011 for divorce on the ground that, the child born to Moganavalli was not through him. He further alleged that Moganavalli was already a married person, suppressing which she got married to him and he also alleged that, she is having illicit intimacy with one Balaji. It may be relevant to state here itself that, the petition in HMOP No.470 of 2011 does not state the name of the person to whom Moganavalli was already married to and the petition has also not made Balaji as a co-respondent. Moganavalli filed M.C.No.46 of 2011 under Section 125 Cr.P.C. before the learned Judicial Magistrate, Tambaram claiming maintenance and she also filed HMOP No.3 of 2011 before the Sub Court, Tambaram under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights.

5. On 05.03.2013, the learned Judicial Magistrate, Tambaram passed orders directing Paulsamy to pay interim maintenance of Rs.10,000/- per month, which order was challenged by Paulsamy before the Sessions Court, which reduced the monthly maintenance to Rs.7,000/- on 03.12.2013. Thus, Paulsamy was liable to pay Rs.7,000/- from 12.03.2012 onwards to Moganavalli as interim maintenance and the main maintenance petition is still pending. On a petition in I.A.No.73 of 2013 in HMOP No.470 of 2011, orders were passed by the Sub Court, Tambaram for DNA test of the child and Paulsamy and a report dated 07.01.2014 was received, which showed that Paulsamy had fathered the child. Thereafter, on 13.02.2014 Paulsamy filed a memo for withdrawing HMOP No.470 of 2011 and he also filed a memo saying no objection for a decree being passed in the restitution of conjugal rights petition HMOP No.3 of 2012, thereby praying to the Court to pass a decree in favour of Moganavalli.

6. On account of the memo filed by Paulsamy, HMOP No.470 of 2011 for divorce was dismissed as withdrawn and a decree for restitution of conjugal rights was passed in HMOP No.3 of 2012 on 01.03.2014. Immediately on 01.03.2014, Paulsamy filed an application under Section 127 Cr.P.C. in M.C.No.46 of 2011 contending that, the order of interim maintenance should be cancelled in view of the decree for restitution of conjugal rights passed in favour of Moganavalli in HMOP No.3 of 2012. In other words, it is the contention of Paulsamy that, now that a decree for restitution of conjugal rights has been passed, it is the duty of Moganavalli to come and live with him and therefore, she will not be entitled to payment of any maintenance. To be more precise, Mr.A.E.Chellaiah, learned Senior Counsel submitted that, Paulsamy is liable to pay maintenance at the rate of Rs.7,000/- per month only from 12.03.2012 the date of interim application and upto 01.03.2014, the date on which the decree of restitution of conjugal rights was passed by the Court. The total amount comes to Rs.1.5

lakhs, of which Paulsamy has paid Rs.1 lakh to Moganavalli admittedly, and it is Paulsamy's stand that the balance of Rs.50,000/- will be paid, only if Moganavalli comes and lives with him.

7. Mr.A.E.Chellaiah, learned Senior Counsel also pointed out to the Court that, Moganavalli went to the Supreme Court for transferring the petitions filed in Chennai to Mumbai and those petitions were dismissed by the Supreme Court on 04.08.2014.

8. Mr.Tiwari, learned counsel appearing for Moganavalli submitted that, Moganavalli was driven out of the house on the basis of wild allegations that, the child born to her was not through Paulsamy. Since she had no one in Chennai, she had to take refuge with her sister in Mumbai as both her parents are dead. He also contended that, she has no means to maintain herself and her child.

9. In view of the aforesaid developments, Paulsamy is before this Court to quash the entire maintenance proceedings in M.C.No.46 of 2011. ***If may apparently appear that** under second proviso to Section 125(3), Moganavalli will not be entitled to any maintenance, as she is refusing to live with Paulsamy even after the decree of restitution of conjugal rights. Section 125(3) second proviso reads as follows:

"125(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided

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."

10. In this case, this Court has to see whether the entire application can be quashed on the undertaking given by

Paulsamy before this Court that, he is willing to live with his wife and that the decree for restitution of conjugal rights requires to be implemented. Moganavalli was hardly 32 years old when she agreed to marry Paulsamy who was about 56 years, because of her poverty conditions. Moganavalli had no parents and she was dependent upon her sisters. After marrying a young girl of his daughter's age, he has suspected her fidelity and accused her of adultery and even went to the extent of denying that the child was not born through him. On account of her sheer helplessness, she filed the maintenance proceedings M.C.No.46 of 2011 and also the application for restitution of conjugal rights. It was Paulsamy who filed HMOP No.470 of 2011 for divorce alleging that the child was not born to him. Thereafter, when the DNA result came against Paulsamy, he cleverly filed a memo before the Sub Court withdrawing his divorce application and gave consent in the restitution of conjugal rights application filed by Moganavalli only to frustrate the maintenance claim. This Court cannot permit such subterfuge. After making such serious allegations, one cannot expect any human being with self respect to resume cohabitation. Hence, Moganavalli has sufficient reasons to stay away from Paulsamy. The fact remains that Paulsamy has paid only Rs.1 lakh in compliance with the interim order of maintenance awarded by the Sessions Court. This Court in a petition under Section 482 Cr.P.C. cannot give a finding with regard to the conditions adumbrated in second proviso of Section 125(3) Cr.P.C., as that has to be decided only in trial by the Magistrate. Therefore, this is not a fit case for quashing the entire proceeding in M.C.No.46 of 2011 and hence, this petition is dismissed with costs of Rs.10,000/- payable to Moganavalli. Whatever is stated above in this order is only for the limited extent of deciding this quash petition and the learned Magistrate is directed to proceed with the enquiry without in any way being influenced by whatever is observed herein. The Magistrate is directed to first ensure that Moganavalli is paid the entire arrears of interim maintenance upto date before proceeding further with the enquiry. If Paulsamy does not pay the arrears, the learned Magistrate is directed to take coercive proceedings against him. Consequently, connected miscellaneous petitions are closed.

-Sd/-

Assistant Registrar

***Delected in para 4 & 9
and corrected as per order
dated 19.08.2015 and made herein
Sd/- Assistant Registrar (CS-II)
Dated : 25.08.2015**

//True copy//

Sub Assistant Registrar

To

The Judicial Magistrate
at Tambaram.

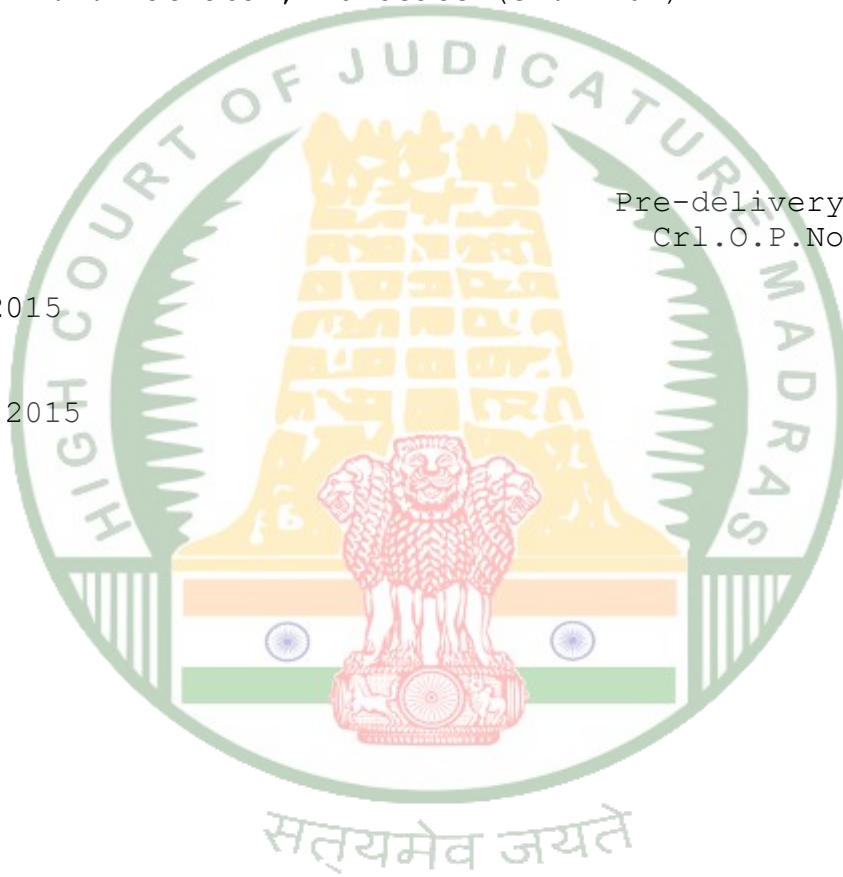
To be substituted to the
order already despatched
on 14.08.2015

+ 2 cc to Mr.R.Prathaban, Advocate (SR.44102)

TS (co)
cp 11.08.2015

TEJ [CO]
PSI 26.08.2015

Pre-delivery order in
Crl.O.P.No.30452 of 2014



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