

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.O.P.No.22391 of 2009
and
M.P.No.1 of 2009

M.Shanmugam

... Petitioner

Vs.

S.Lakshmi

...Respondent

Prayer: Petition is filed under Section 482 Cr.P.C, praying to call for the records in Crl.R.C.No.13 of 2007 on the file of the learned I Additional District Judge, Erode, dated 28.09.2007, confirming the judgment in M.C.No.19 of 2005 on the file of the learned Chief Judicial Magistrate, Erode, dated 23.01.2007 and set aside the same.

For Petitioner : Mr.V.Bharathidasan

For Respondent : Mr.R.Thirumoorthy

Date of Reserving the Judgment :- 28.04.2015

Date of Pronouncement :- 29.04.2015

O R D E R

This petition has been filed by the petitioner under Section 482 of the Criminal Procedure Code against the order passed by the learned I Additional District Judge, Erode, in Criminal Revision Case No.13 of 2007, dated 28.09.2007, confirming the order of the learned Chief Judicial Magistrate, Erode, in M.C.No.19 of 2005, dated 23.01.2007.

2. The respondent herein has filed a petition under Section 125 of Cr.P.C. in M.C.No.19 of 2005 against the petitioner herein before the learned Chief Judicial Magistrate, Erode, seeking maintenance. The learned Chief Judicial Magistrate, after hearing both the parties and on appreciation of oral and documentary evidence, allowed the maintenance petition filed by the respondent/wife and directed the petitioner herein/husband to pay a sum of Rs.750/- per month to the respondent as maintenance. Aggrieved by the aforesaid order, the petitioner herein has filed a Criminal Revision Case No.13 of 2007 before the learned I Additional District Judge, Erode. The learned I Additional District Judge, after examining the documents and also analyzing the evidence, dismissed the Criminal Revision Case and confirmed the

order passed by the learned Chief Judicial Magistrate, Erode, in M.C.No.19 of 2005, dated 23.01.2007. As against the order passed by the learned I Additional District Judge, the petitioner has preferred this Criminal Original Petition before this Court.

3. The learned counsel appearing for the petitioner would contend that the judgment passed by the Courts below awarding a sum of Rs.750/- per month as maintenance to the respondent is against law and further, the Courts below have failed to consider the fact that the petitioner does not have any means to pay maintenance and he is living at the mercy of his son, whereas the respondent is having sufficient means to maintain herself. The learned counsel for the petitioner further contended that the present Criminal Original Petition cannot be said to be a second revision. In support of his contention, the learned counsel for the petitioner has relied upon a decision of the Hon'ble Apex Court reported in AIR 1997 Supreme Court 987 [Krishnan and another Vs. Krishnaveni and another]. The learned counsel also contended that the Courts below have passed the orders without proper application of mind and therefore, the said orders have to be set aside.

4. Per contra, the learned counsel appearing for the respondent would contend that the respondent has no source of income to maintain herself and therefore the Courts below have correctly awarded maintenance to the respondent. The learned counsel further contended that it is well settled law that a second revision cannot lie under Section 482 of Cr.P.C. In support of his contention, the learned counsel relied upon a decision of the Hon'ble Apex Court reported in 1999 (II) CTC 646 [Rajathi Vs. C.Ganesan] and would contend that the order of the Courts below have to be confirmed and this Criminal Original Petition has to be dismissed.

5. This Court has considered the submissions made by the learned counsel on either side and perused the records.

6. Before going into the merits of the contention raised by the learned counsel appearing for the parties, it is relevant to extract Section 397 Cr.P.C.

"397. Calling for records to exercise powers of revision.- (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, any may, when calling for such record, direct that the execution of any sentence or order be suspended and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.- All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

A reading of sub-section 3 of Section 397 Cr.P.C., would make it crystal clear that if an application under this Section has been made by any person either to the High Court or to the Sessions Court, no further application by the same person shall be entertained by the other of them.

7. Admittedly, in this case, the respondent/wife has no independent source of income to maintain herself. Further, on the side of the petitioner/husband, no material was produced showing that the respondent/wife was having independent source of income. Therefore, the learned Chief Judicial Magistrate, after considering the above said fact, allowed the maintenance petition filed by the respondent/wife and directed the petitioner/husband to pay a sum of Rs.750/- per month to his wife as maintenance. Further, as against the order passed by the learned Chief Judicial Magistrate, Erode, in M.C.No.19 of 2005, the petitioner/husband had preferred a first revision before the learned I Additional District Judge, Erode, in CrI.R.C.No.13 of 2007 and after the order passed in the said revision by the learned I Additional District Judge, the petitioner herein preferred this second revision before this under Section 482 Cr.P.C. Now the main question that has to be decided is, whether the second revision preferred by the petitioner/husband is maintainable or not?

8. In the decision reported in 1999 (II) CTC 646 [Rajathi Vs. C.Ganesan], at paragraph Nos.5 and 10, the Hon'ble Apex Court has held as follows:-

"5. Proceeding under Section 125 of the Code are of summary nature. This Section is meant to provide immediate relief to the wife, minor children and parents, who are unable to maintain themselves. A maximum of Rs.500/- per month can be granted to the wife under this Section. This will be when husband having sufficient means neglects or refuses to maintain her, she being unable to maintain herself. Section 125 we may quote in extenso :-

"125. Order for maintenance of wives, children and parents.-(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct :

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Explanation.-For the purpose of this Chapter,-

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

(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 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 that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

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.

Explanation.-If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reasons, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reasons she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

If we refer to proviso to sub-section (3) of Section 125 were a husband offers to maintain his wife on the condition of her living with him and she refuses to live with him a Magistrate may consider any ground of refusal stated to her and nevertheless make an order notwithstanding such offer, if the Magistrate is satisfied that there is just ground for so doing. Explanation to the proviso states that if a husband has contracted marriage with any other woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

10. We are not going into the question if the High Court on examining the case on merit was correct in coming to the conclusion that the wife was possessed of

sufficient means and was able to maintain herself. In the present appeal. We are only concerned to see if the High Court was justified in invoking its inherent powers under Section 482 of the Code and we do not think the High Court was right."

9. In the above said ruling, the Hon'ble Apex Court, after examining the facts of the case and on considering the ruling of the Hon'ble Apex Court reported in AIR 1997 Supreme Court 987 [Krishnan and another v. Krishnaveni and another], (cited by the learned counsel for the petitioner) passed the following judgments:-

"11. In Krishnan and another v. Krishnaveni and another, 1997(4) SCC 241 this Court explained the scope and power of the High Court under Section 482 of the Code. The question before the Court was if in view of the bar of second revision under sub-section (3) of Section 397 of the Code was prohibited, inherent power of the High Court is still available under Section 482 of the Code. This Court said as under:

"Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensure. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with the inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay

in trial and protraction of proceedings. The object of the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justice can be ensured only when trial is conducted expeditiously."

In the present case, the High Court minutely examined the evidence and came to the conclusion that the wife was living separately without any reasonable cause and that she was able to maintain herself. All this High Court did in exercise of its powers under Section 482 of the Code which powers are not a substitute for a second revision under sub-section (3) of Section 397 of the Code. The very fact that the inherent powers conferred on the High Court are vast would mean that these are circumscribed and could be invoked only on certain set principles.

12. It was not necessary for the High Court to examine the whole evidence threadbare to exercise jurisdiction under section 482 of the Code. Rather in a case under Section 125 of the Code trial Court is to take a prima facie view of the matter and it is not necessary for the court to go into the matrimonial disputes between the parties in detail. Section provides maintenance at the rate of Rs.500/- per month. There is outcry that this amount is too small. In the present case, however, we are quite surprised that the court granted paltry amount of Rs.200/- per month as maintenance which was confirmed in the revision by the Sessions Court and the High Court thought it fit to interfere under Section 482 of the Code in exercise of its inherent jurisdiction.

Whatever may be the merit of the case, High Court wrongly exercised its jurisdiction under Section 482 of the Code in passing the impugned order. The appeal is allowed and the impugned order dated December 4, 1997 of the High Court is set aside."

10. The Hon'ble Apex Court, in a Division Bench decision reported in 2009 (2) CTC 242 [Shakuntala Devi and others Vs. Chamru Mahto and another], at paragraph No.17, has observed as follows:-

"17. We have carefully considered the submissions made on behalf of the respective parties and we see no reason to take a stand which is different from the stand that was taken both in Dayanand's case (supra) and Krishnan's case (supra). It is well settled that the object of the introduction of Sub- section (3) in Section 397 was to prevent a second revision so as to avoid frivolous litigation, but, at the same time, the

doors to the High Court to a litigant who had lost before the Sessions Judge was not completely closed and in special cases the bar under Section 397(3) could be lifted. In other words, the power of the High Court to entertain a petition under Section 482, was not subject to the prohibition under Sub-section (3) of Section 397 of the Code, and was capable of being invoked in appropriate cases. Mr. Sanyal's contention that there was a complete bar under Section 397(3) of the Code debarring the High Court from entertaining an application under Section 482 thereof does not, therefore, commend itself to us."

11. The above said rulings are squarely applicable to the facts of the present case. In view of the above cited rulings rendered by the Hon'ble Apex Court, the second revision viz., this Criminal Original Petition filed by the petitioner under Section 482 Cr.P.C. is not at all maintainable according to law. Further, in the present case, the learned Chief Judicial Magistrate, Erode, passed an order directing the petitioner herein to pay a sum of Rs.750/- per month as maintenance to his wife/respondent herein and since the said amount is reasonable one, the order passed by the learned Chief Judicial Magistrate was confirmed by the learned I Additional District Judge, Erode. Hence, this Court is of the considered view that there is no illegality or infirmity in the order passed by the Courts below and the same do not warrant any interference by this Court. Therefore, this Criminal Original Petition is liable to be dismissed and accordingly, it is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jrl
To

1. The Chief Judicial Magistrate,
Erode.
2. The I Additional District Judge,
Erode.

+ 1 cc to M/s.V.Bharathidasan, Advocate Sr.24116

Cr1.O.P.No.22391 of 2009

GP(CO)
Eu 04.06.15