IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.04.2015
DELIVERED ON : 29.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.5057 of 2015
and M.P.No.1 of 2015

Ulaganathan .. Petitioner

vs.

1.Puppa Nisha Priyadarshini
2.Minor Sharmila Charu
3.Minor Meenakshi .. Respondents

[Minors 2 and 3 rep by their mother and guardian
1st respondent Puppa Nisha Priyadarshini]

Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the judgment in Crl.R.C.No.43 of 2013 on the file of the II Addl. District and Sessions Judge, Vellore, Ranipet, Vellore District dated 25.03.2014 in respect of confirming the order in M.C.No.18 of 2012 on the file of the Judicial Magistrate, Arakkonam dated 26.06.2013, insofar as the conviction is concerned.

For Petitioner : Mr.M.Rajinikanth

O R D E R

This petition has been filed to set aside the judgment in Crl.R.C.No.43 of 2013 on the file of the II Addl. District and Sessions Judge, Vellore, Ranipet, Vellore District dated 25.03.2014 in respect of confirming the order in M.C.No.18 of 2012 on the file of the Judicial Magistrate, Arakkonam dated 26.06.2013, insofar as the conviction is concerned.

2. Heard the learned counsel appearing for the petitioner.

3.The petitioner/husband has approached this Court for quashing the maintenance that was awarded in favour of the respondents under Section 125 Cr.P.C. by the Courts below. The petitioner married the first respondent on 29.09.2000 and through the wedlock, he has two children. The couple got estranged and the respondent was brining up her two children. The respondent filed an application in M.C.No.18 of 2012 before the learned Judicial Magistrate, Arakkonam under Section 125 Cr.P.C. for maintenance and the learned Magistrate, after due enquiry awarded a sum of Rs.3,000/- for the first respondent and Rs.1,500/- each for respondents 2 and 3 [children] as maintenance. Thus totally, a sum of Rs.6,000/- has been awarded as maintenance. Aggrieved by the said order, the petitioner approached the Sessions Court in Crl.R.P.No.43 of 2013 and the same was dismissed on 25.03.2014,

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aggrieved by which this petition under Section 482 Cr.P.C. has been filed.

4. Under Section 397(3) Cr.P.C. when once a party approached the Sessions Court by invoking revisional jurisdiction, is precluded from approaching this Court again. Of course, a petition under Section 482 Cr.P.C. is maintainable, but only under extraordinary circumstances where there has been gross miscarriage of justice. In this case, it has to be seen as to whether the orders of the Court below suffer from serious infirmities, warranting interference by this Court under Section 482 Cr.P.C.

5. The learned counsel for the petitioner submitted that the petitioner is paying LIC premium of Rs.582/-and Rs.622/- respectively in the name of his two children and that the trial Court and the revisional Court had not taken these facts into consideration for determining the quantum of maintenance. He also submitted that the petitioner was merely working on a private employment and that he does not have sufficient means to pay the sum of Rs.6,000/- that was awarded by the Courts below.

6. On a reading of the evidence on record, this Court finds that the trial Court has given a clear finding that the petitioner was working in the Tamil Nadu Electricity Board. The learned counsel for the petitioner submitted that the petitioner was not even a full time employee of Tamil Nadu Electricity Board and he is only a casual labourer. In this regard, the trial Court has given the following finding:

> "4. .....The respondent is working as E.B. Line Man and drawing a monthly salary of Rs.27,000/-. The respondent has stated that he is working as Masdhoor in the Tamil Nadu Electricity Board and he is not earning as alleged by the petitioner. Both of them have not filed any documentary evidence to establish that the respondent is having sufficient means to pay maintenance and that he is drawing salary by working as Line Man in the Electricity Board and also having immovable properties. "

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7. This is a finding of fact which has been confirmed by the revisional Court also. Hence, there is no scope for interference under Section 482 Cr.P.C as the order is not perverse taking into consideration today's cost of living.

In the result, this petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

gms

To

1. II Addl. District and Sessions Judge,
   Vellore, Ranipet, Vellore District.
2.-do- Through Principal Sessions Judge, Vellore.
3. Judicial Magistrate, Arakkonam.
4. -do- Through Chief Judicial Magistrate, Vellore.

+ 1 cc to Mr.M.Rajinikanth, Advocate Sr.24120

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Eu 22.05.2015

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