

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2015

CORAM

THE HON'BLE MR. JUSTICE R.S.RAMANATHAN

Crl.O.P.No.7078 of 2015 and
M.P.Nos.1 and 2 of 2015

C.Manikandan

...Petitioner

vs.

1. Usha

2. Minor Duraimurugan

(R2 rep. by guardian and next
friend R1)

...Respondents

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to set aside the order dated 06.01.2015 passed in Crl.R.P.No.12 of 2014 on the file of the District and Sessions Court, Villupuram whereby confirming the order passed in M.C.No.5 of 2007 dated 01.08.2013 on the file of the Judicial Magistrate No.1, Ulundurpet, Villupuram District.

For Petitioner : Mr.C.Prakasam

O R D E R

This Petition is filed against the order passed in Crl.R.P.No.12 of 2014 on the file of the Principal District and Sessions Court, Villupuram confirming the order of the learned Judicial Magistrate No.1, Ulundurpet in M.C.No.5 of 2007.

2.It is submitted by the learned counsel for the petitioner that the learned Magistrate awarded maintenance of Rs.750/- to the wife/1st respondent and Rs.500/- to the son/ 2nd respondent from the date of filing of the petition on the basis that the petitioner is a mason and is getting daily wages of Rs.600/-. The said order was confirmed by the learned Principal District and Sessions Judge, Villupuram in Crl.R.P.No.12 of 2014. He further submitted that after the order was passed, the petitioner met with an accident and he sustained disability of 65% and he is not able to work as mason and earn his livelihood. He therefore argued that the order passed by learned Judicial Magistrate No.1, Ulundurpet, Villupuram District in M.C.No.5 of 2007 dated 01.08.2013 confirmed by the learned District and Sessions Judge, Villupuram in Crl.R.P.No.12 of 2014 dated 06.01.2015 are liable to be set aside.

3. According to me, under Section 127 Cr.P.C., the petitioner can approach the learned Magistrate for alteration of maintenance by giving particulars regarding the change of circumstances and before the learned Magistrate, the petitioner is also entitled to lead the evidence to the effect that he has sustained 65% disability and lost the earning capacity. This Court exercising the power under Section 482 Cr.P.C., cannot take evidence and alter the maintenance. Hence this Criminal Original Petition is disposed of with a liberty to the petitioner to file a petition under Section 127 Cr.P.C., before the learned Magistrate for alteration of maintenance. Consequently connected miscellaneous petitions are closed.

ssd

s/d-
Assistant Registrar(CO)
Dt: 26/3/2015

True Copy

Sub-Assistant Registrar

To

- 1) The District and Sessions Court,
Villupuram
- 2) The Judicial Magistrate No.1, Ulundurpet,
Villupuram District.
- 3) The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.C.Prakasam, Advocate SR 16406

(co)
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and M.P.No.1 and 2 of 2015

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