

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2015

The Hon'ble Mr.Justice P.N.PRAKASH

CRL.O.P.No.8800 of 2015

and

M.P.No.1 of 2015

P.R.Subramaniam

.. Petitioner

Vs.

P.S.Mangaiyarkarasi

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for records to set aside the order passed by learned II Additional Sessions Judge, Salem, in C.R.P.No.23 of 2013, dated 02.02.2015, in confirming the order passed by the learned Judicial Magistrate, Omalur in M.C.No.14 of 2009, dated 20.02.2013.

For Petitioner :Mr.S.Doraisamy

O R D E R

This Petition is filed to set aside the order, dated 02.02.2015, passed by learned II Additional Sessions Judge, Salem, in C.R.P.No.23 of 2013.

2. It is seen that the respondent/wife has filed a maintenance case against the petitioner/husband in M.C.No.14 of 2009 on the file of District Munsif Cum Judicial Magistrate, Omalur/Trial Court. The Trial Court, after thorough enquiry, awarded Rs.5,000/- in favour of the respondent/wife, as monthly maintenance, by order, dated 20.02.2013. Aggrieved by the said order, dated 20.02.2013, the petitioner preferred a Revision, C.R.P.No.23 of 2013, on the file of II Additional Sessions Court, Salem/Lower Appellate Court. The Lower Appellate Court also, by order, dated 02.02.2015, confirmed the order passed by the Trial Court. Challenging the order passed by the Lower Appellate Court, the petitioner/husband has filed by the present Criminal Original Petition, by invoking the provisions of Section 482 Cr.P.C.

3. Under the Code, revisional jurisdiction is concurrent one, and once the petitioner elects to approach the Sessions Court, he cannot come before this Court by way of further revision. The learned counsel appearing for the petitioner submitted that, in extra-ordinary cases, powers conferred under Section 482 Cr.P.C. can be invoked, where there is a manifest illegality. Therefore, this Court went into the orders passed by the Courts below in order to find out whether there is any manifest illegality in awarding maintenance in favour of the respondent.

4. The learned counsel appearing for the petitioner submitted that the petitioner is a pensioner and he is getting meager sum of Rs.830/ as pension, and he does not have any other means. But, a reading of the order passed by the Trial Court, it is seen that the learned Judicial Magistrate has clearly given findings that the petitioner has received about Rs.7,00,000/- to Rs.8,00,000/- on his retirement, and that he has also not produced any documents to prove in what way the said amount was utilized by him. The learned Magistrate has also given findings that the petitioner has not shown any proof as to the sale of the property, which was in his possession. Thus, in the absence of any positive evidence adduced by the petitioner, the Trial Court rightly determined the maintenance amount at Rs.5,000/-per month, which is indeed very normal in the existing cost of living index, and the said order was also affirmed by the Lower Revisional Court. Hence, this Court does not find any merit in this Petition. Accordingly, the Criminal Original Petition is dismissed. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional Sessions Judge, Salem,
2. -do- Through The Principal Sessions Judge, Salem.
3. The Judicial Magistrate Omalur.
4. -do- The Chief Judicial Magistrate Salem.

+ 1 cc to Mr.S.Doraisamy, Advocate SR.19326

RJ(CO)
EU 22.04.2015

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