

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.04.2015
DELIVERED ON : 29.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.2264 of 2012
and M.P.No.1 of 2011

S.Nallaperumal

.. Petitioner

vs.

Suguna

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to the order dated 28.07.2011 made in Crl.RC.No.08 of 2011 on the file of the Additional District cum Sessions Court [Fast Track Court No.3], Virudhachalam in confirming the order dated 30.11.2010 made in CC No.4 of 2009 on the file of District Munsif cum Judicial Magistrate Court, Tittagudi, granting maintenance of Rs.4000/- to the respondent/wife and set aside the same as perverse, against evidence and settled principles of law.

For Petitioner : Mr.R.Veeramani
For Respondent : Mr.AL.Ganthimathi

ORDER

This petition has been filed to call for the records pertaining to the order dated 28.07.2011 made in Crl.RC.No.08 of 2011 on the file of the Additional District cum Sessions Court [Fast Track Court No.3], Virudhachalam in confirming the order dated 30.11.2010 made in CC No.4 of 2009 on the file of District Munsif-cum-Judicial Magistrate Court, Tittagudi, granting maintenance of Rs.4000/- to the respondent/wife and set aside the same as perverse, against evidence and settled principles of law.

2. Heard the learned counsel appearing for the petitioner and the learned counsel for the respondent.

3. The petitioner married the respondent on 24.10.1994 and through the wedlock, he has three children. Their marriage failed and they got estranged some time in 2007. The respondent filed a petition in M.C.No.4 of 2009 under Section 125 Cr.P.C before the learned District Munsif-cum-Judicial Magistrate, Thittakudi, claiming maintenance. After enquiry, the trial Court by order dated 30.11.2010 directed the petitioner to pay Rs.4,000/- per month as maintenance from the date of filing of the petition. Aggrieved by the order dated 30.11.2010 in M.C.No.4 of 2009, passed by the learned District Munsif-cum-Judicial Magistrate, Thittakudi, the petitioner filed Criminal Revision Case No.8 of 2011 before the Sessions Court and after hearing both sides, the Revisional Court dismissed the revision application and confirmed the order passed

by the trial Court. This petition under Section 482 Cr.P.C. has been filed challenging the orders of the Courts below.

4. It is trite law that, a second revision is not maintainable at the instance of the party who has already exhausted his remedy by invoking the revisional jurisdiction of the Sessions Court. In extraordinary cases, where there is gross injustice is ensued, a petition under Section 482 Cr.P.C. before this Court is maintainable. In this case, this Court has to see whether the orders passed by the Courts below suffer from serious infirmities, warranting interference under Section 482 Cr.P.C.

5. Mr.R.Veeramani, learned counsel for the petitioner fairly submitted that, in the teeth of the aforesaid legal position, it would be a Himalayan task for him to demonstrate from the materials on record that, gross injustice has occurred, warranting interference under Section 482 Cr.P.C. The learned counsel took me through the evidence of P.W.1 and pointed out that P.W.1 has admitted that at present she is working on her own for sustenance. A solitary line referred to by Mr.Veeramani, learned counsel cannot be interpreted in such a manner. The evidence of P.W.1 as it reads, is as follows:

"நான் தற்போது சுயமாகத்தான் சம்பாதித்து வருகிறேன். என்னால்
கை கால் தெம்பு இருக்கும்வரைதான் உழைத்து சாப்பிடுகிறேன்."

6. The law does not expect an indigent wife to remain idle. Till the Court decrees maintenance and actually gets the money through legal process to her, she has to feed her stomach and will not wait for a future event to happen. In the country side, indigent women who are left away by husbands would go as daily wage earners under various Government Schemes or as labourers in private farm lands, for their sustenance. That cannot be construed as, they having sufficient means to maintain themselves. Mr.Veeramani, learned counsel further pointed out to me that even P.W.1 has admitted that, the petitioner has to maintain his aged parents and the three children born to him. In the light of this admission by P.W.1, the quantum of maintenance awarded by the Court below at Rs.4,000/- is indeed very high.

7. This Court perused the records and found that the Courts below had given a finding that, the petitioner also has some lands from which he is getting agricultural income, apart from his employment as a teacher. Taking all those factors into consideration only, the trial Court has awarded Rs.4,000/- as maintenance, which was confirmed by the revisional Court. Therefore, there is no infirmity in the order of the Courts below and this petition stands dismissed. Consequently, connected miscellaneous petition is closed.

8. Mr.Veeramani, learned counsel for the petitioner submitted that the petitioner has deposited monthly maintenance, with the interim order passed by this Court in M.P.No.1 of 2012 on 03.02.2012. If the respondent had not already withdrawn the money, liberty is given to the respondent to withdraw

the amount and all other amounts that have been deposited by the petitioner, from the Courts below. If in any other collateral proceedings any maintenance has been awarded to the respondent, it is open to the petitioner to file an appropriate application under Section 127 Cr.P.C for alteration of maintenance.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gms

To

1. Additional District cum Sessions Court
[Fast Track Court No.3], Virudhachalam.

2.District Munsif cum Judicial Magistrate Court,
Tittagudi,

3.The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr.R.Veeramani, Advocate SR.23768

+ 1 cc to M/s. AL.Ganthimathi, Advocate SR.23803

PA(CO)
EU 20.05.2015

Cr1.O.P.No.2264 of 2012

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