

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.11439 of 2016

and

Crl.M.P. No.5838 of 2016

G. Venkataraman

..Petitioner

Vs.

1 Shailaja

2 Minor Mohith Krishnan

3 Minor Raksha Nivasini

(Minors 2 & 3 are represented by their
Mother the 1st Respondent)

..Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for records in Crl.R.C. No.29/2014 on the file of the Principal Sessions Judge, Vellore, order dated 04.01.2016 confirming the order of the learned Judicial Magistrate, Katpadi in M.C. No.14/2011 dated 21.01.2014 and set aside the same.

For Petitioner : Mr.R. Ganesh Kumar

ORDER

This Criminal Original Petition is filed challenging the order dated 04.01.2016 passed by the Principal Sessions Judge, Vellore, in Crl.R.C. No.29 of 2014, confirming the order dated 21.01.2014 passed by the Judicial Magistrate, Katpadi in M.C. No.14/2011.

2 Heard the learned counsel for the petitioner and perused the materials available on record.

3 It is seen that the petitioner got married to Shailaja and they have two children through the wedlock. Their marriage ran into rough weather, resulting in the couple getting estranged. Shailaja and her two children filed M.C. No.14 of 2011 under Section 125 Cr.P.C. before the Judicial Magistrate, Katpadi for maintenance and the Judicial

Magistrate, Katpadi, by order dated 21.01.2014, directed the petitioner to pay Rs.2,500/- per mensem to Shailaja and Rs.1,500/- per mensem to each child as monthly maintenance, totally amounting to Rs.5,500/- per mensem. Challenging the said order, the petitioner filed Crl.R.P. No.29/2014 before the Sessions Court, Vellore, which was dismissed on 04.01.2016, confirming the order passed by the Judicial Magistrate, Katpadi. Challenging the orders passed by the Courts below, the petitioner is before this Court.

4 Under Section 397(3) Cr.P.C., when a party invokes revisional jurisdiction of the Sessions Court, he is precluded from approaching the High Court by way of second revision. However, a petition under Section 482, Cr.P.C. is maintainable, where, it is demonstrated that a grave injustice has occurred on account of the orders passed by the Court below.

5 The learned counsel for the petitioner submitted that in this case, the petitioner does not have the wherewithal to pay the maintenance amount, which has not been considered by the Courts below.

6 On a reading of the order passed by the Revisional Court, a clear finding is available, wherein, it is stated that the petitioner has not produced any evidence to show how much money he is earning.

7 Under Section 106 of the Evidence Act, the burden is cast on a person to prove the facts that are exclusively known to him. When the petitioner has failed to discharge the minimum burden, the Trial Court and the Revisional Court have proceeded with the case and awarded maintenance, as aforesaid, which, in the considered opinion of this Court, is not an onerous amount and in fact, only a pittance, given the cost of living index that is prevailing as on today. This Court does not find any serious infirmity in the orders passed by the two Courts below resulting in miscarriage of justice.

In the result, this Criminal Original Petition stands dismissed as being devoid of merits. Connected Crl.M.P. is closed.

cad

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

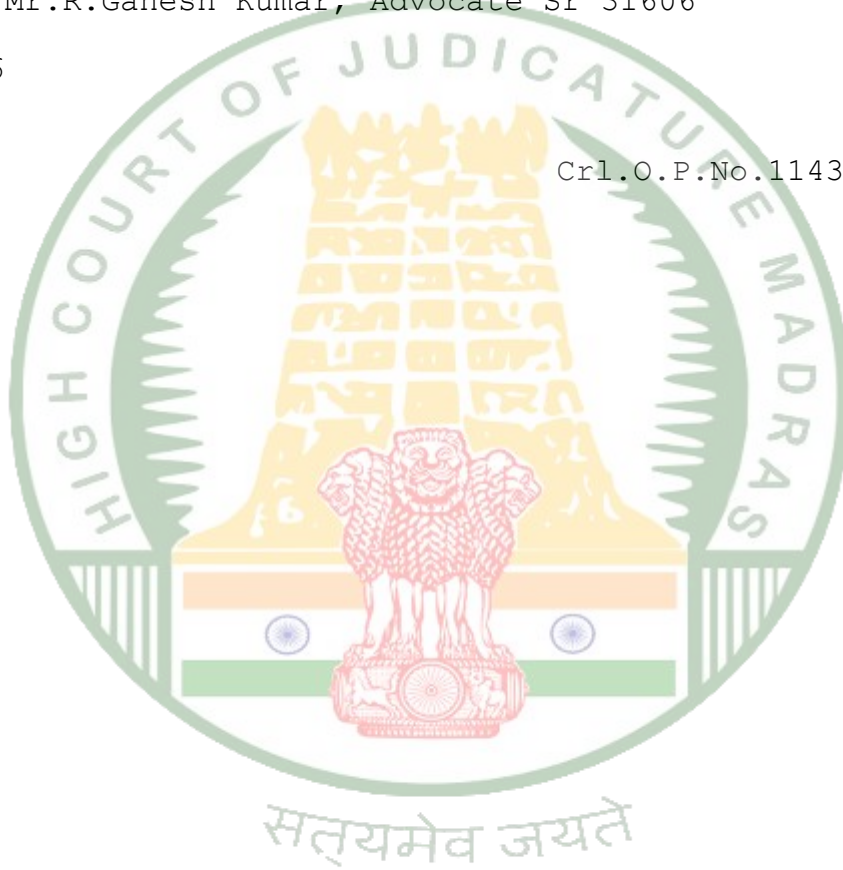
To

- 1 The Principal Sessions Judge, Vellore.
- 2 The Judicial Magistrate, Katpadi.
- 3 The Public Prosecutor, High Court of Madras
Chennai 600 104.

+ 1 cc to Mr.R.Ganesh Kumar, Advocate Sr 31606

KR/22/6/16

Cr1.O.P.No.11439 of 2016



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