

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2016

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.1463 of 2016

and

Crl.M.P.No.12653 of 2016

G.Karthik

S/o.Gopal

... Petitioner

Vs.

K.Latha

D/o.R.Kannan

... Respondent

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the order of learned Judicial Magistrate II, Poonamallee, passed in C.M.P.No.2452 of 2016 in M.C.No.7 of 2015 on 04.10.2016.

For Petitioner : Mr.K.A.Mariappan

O R D E R

This revision is preferred against the order of learned Judicial Magistrate II, Poonamallee, passed in C.M.P.No.2452 of 2016 in M.C.No.7 of 2015 on 04.10.2016.

2. Petitioner and respondent are husband and wife. Differences arose between them. Respondent filed O.P.No.4740 of 2013 on the file of learned III Additional Judge, Family Court, Chennai, seeking divorce. She has also filed M.C.No.7 of 2015 on the file of learned Judicial Magistrate II, Poonamallee, seeking maintenance. In such case, the petitioner has been set ex parte on one of the hearing dates viz., 10.12.2015. Challenging the same, petitioner moved C.M.P.No.2452 of 2016 in M.C.No.7 of 2015, which came to allowed under orders 04.10.2016 with a condition requiring the petitioner to effect payment in a sum of Rs.10,000/- to the respondent. There against, the present revision has been filed.

3. Heard learned counsel for petitioner.

4. The order of Court below informs:

The contention of petitioner/husband that no notice has been served upon him was rejected by Court below on the reasoning

that when the maintenance case came up on 19.11.2015, notice and private notice was ordered, pursuant to which learned counsel for respondent/wife took private notice on 26.11.2015 and the same was acknowledged by petitioner/husband on 28.11.2015 and proof there regards has been filed before Court on 10.12.2015. Petitioner/husband has not disputed the signature in the acknowledgment card. Despite service, petitioner has not chosen to appear before Court and hence, an ex parte order came to be passed. The reason stated by petitioner for not appearing before the Court was not accepted. In the main case, the petitioner/husband has been examined and the evidence on the side of respondent/wife has also been completed and the case was posted for arguments. At such stage, the present petition has been filed by petitioner/husband towards protracting the proceedings in the main case. Despite sufficient opportunities, the petitioner/husband has not come forward to put forth his case and continuously, he was absent. Though the petitioner/husband has not stated any valid reason for allowing the petition, it would be reasonable to decide the main case after affording opportunities to both sides. At the same time, the respondent/wife, who regularly is appearing before the Court, has filed the main case seeking maintenance and hence, it would be appropriate to allow the petition with certain conditions. On the above reasoning and taking into consideration the averments in the petition that the petitioner/husband is going to marry another girl and he is doing contract work at Bangalore, Court below has allowed the petition on condition requiring the petitioner to pay a sum of Rs.10,000/- to the respondent/wife on or before 21.10.2016. It has also been observed that failure on the part of petitioner/husband doing so would result in dismissal of the petition and at no point of time, extension of time would be granted.

5. This Court does not take lightly parties allowing matters to go ex parte, thereafter filing petitions for condonation of delay, obtaining favourable orders therein but ignoring the payment of costs within the specified period, suffering an order of dismissal and thereafter moving revisions before this Court. Through all the period taken up in such methods, the respondent wife is to await further proceedings towards her being granted maintenance.

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Finding no merits, the Criminal Revision Case shall stand dismissed. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

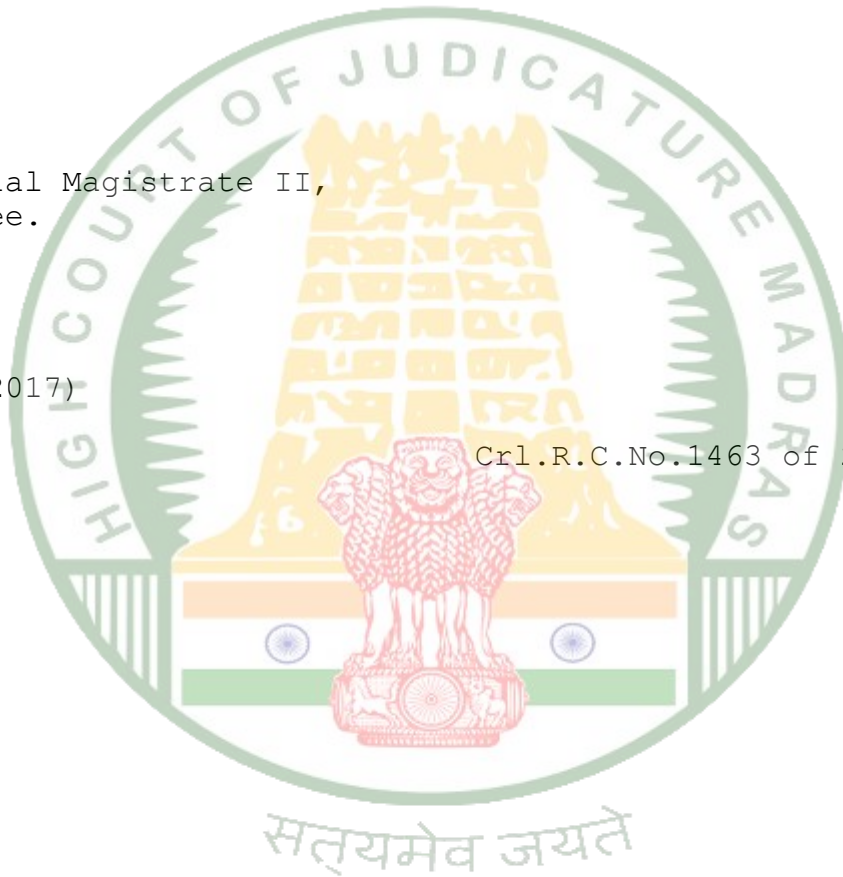
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To

The Judicial Magistrate II,
Poonamallee.

nri (CO)
md(15/02/2017)

Cr1.R.C.No.1463 of 2016



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