

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.R.C.No.403 of 2016

R.Saravanan .. Petitioner/Petitioner
Vs.
Komala .. Respondent/Respondent

Prayer :- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 19.03.2014 made in CMP.No.160 of 2013 in MC.No.12 of 2008 on the file of the learned Judicial Magistrate No.II, Thiruvallur.

For Petitioner : Mr.R.Karunakaran
For Respondent : Mrs.J.Soundari Charasekaran

ORDER

The Criminal revision is directed against the order passed by the learned Judicial Magistrate No.II, Thiruvallur made in CMP.No.160 of 2013 in MC.No.12 of 2008 dated 19.03.2014.

2.It is admitted by both sides, the respondent herein filed maintenance petition in MC.No.12 of 2008 before the Judicial Magistrate No.II, Tiruvallur. After trial, the Judicial Magistrate directed the revision petitioner to pay a sum of Rs.5,000/-p.m. from the date of petition and Rs.15,000/-p.a. towards medical expenses. Thereafter, the respondent filed HMOP.No.57 of 2009 for restitution of conjugal rights against the present revision petitioner, the respondent has not come forward to live with the revision petitioner. Hence, the revision petitioner filed the CMP.No.160 of 2013 to cancel the order passed in MC.No.12 of 2008 passed by the Judicial Magistrate No.II, Thiruvallur. Aggrieved against the said order, the petitioner filed the present revision before this Court.

3.The learned counsel for the petitioner contended that the trial Court without any basis dismissed the application and failed to consider that the respondent has not complied with the order of the Sub Court, directing her to live with the petitioner in the matrimonial home. Further, the trial Court failed to consider the fact, the respondent without any sufficient reasons refused to live with the revision petitioner and she is living separately, hence, she is not entitled for

claiming maintenance under Section 125(5) Cr.PC, and the learned counsel prays to set aside the order of the trial Court and to allow the criminal revision.

4.The learned counsel for the respondent submits that the present petition is filed by the revision petitioner is not liable to be dismissed and the petitioner has not permitted the respondent to enter into the matrimonial home to live with the petitioner. When the respondent entered into the matrimonial home she was beaten by the revision petitioner and his family members. The respondent has given police complaint before the All Women Police Station, Uthukottai against the revision petitioner and his family members. In the present revision, the contention of the revision petitioner is to cancel the maintenance passed under Section 125 (5) Cr.PC is untenable. The trial Court after considering the facts and circumstances of the case, correctly dismissed the claim of the revision petitioner and there is no illegality or infirmity in the order passed by the trial Court and the learned counsel prays to dismiss the revision petition.

5.Heard the rival submissions made on both sides and perused the records.

6.The trial Court directed the revision petitioner to pay a sum of Rs.5,000/-p.m. for maintenance and Rs.15,000/-p.a. towards medical expenses to the respondent/wife and both the parties have not preferred any appeal or revision against the said order. The present revision petitioner filed petition under Section 125(5) Cr.PC to cancel the order passed by the Judicial Magistrate No.II, Thiruvallur.

7.It is useful to extract Section 125(5) Cr.PC, which reads as follows :-

"125.Order for maintenance of wives, children and parents - (5) On proof that any wife in whose favour an order has been made under this Section is living in adultery, or that without sufficient reason she refused to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

8.The revision petitioner claims to cancel the maintenance under Section 125(5) Cr.PC, but he has not proved any one of the ingredients stipulated in the above said section. It is not proved on the side of the petitioner that the respondent is living in adultery and there is no proof for the allegations raised on the side of the petitioner. The petitioner further states that without any sufficient reasons, the respondent refused to live with him, they are living separately by mutual

consent, the respondent is ready to live with her husband, but the petitioner and his family members have beaten her, for which she has given police complaint against the petitioner and his family members, the parents in law and the sister in law have obtained anticipatory bail from the competent Court.

9.The revision petitioner has not denied the fact that the case was registered against him and his family members and they obtained anticipatory bail on the basis of the complaint given by the respondent/wife.

10.In view of the above fact, the contention of the learned counsel for the petitioner that without any sufficient cause or reason, the respondent is living separately is not acceptable one. The petitioner has failed to prove his case under Section 125(5) Cr.PC for cancellation of maintenance awarded by the trial Court. The trial Court after considering the facts and circumstances of the entire case dismissed the petition filed by the revision petitioner. This Court finds there is no illegality or infirmity in the order passed by the trial Court and the same does not warrant any interference by this Court.

11.In the result, the criminal revision petition stands dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Magistrate No.II, Thiruvallur.

2.-do- Thro The Chief Judicial Magistrate
Thiruvallur

+1 cc to Mrs.J.Soundari Chandrasekar vide sr 51840

+1 cc to Mr.R.Karunakaran Advocate sr 51740

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