

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.21204 of 2016

and

Crl.MP.No.9815 of 2016

S.Chandrasekaran ...Petitioner

Vs

R.Srimathi ... Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order dated 06.03.2015 made in M.C.No.9 of 2013 on the file of the learned District Munsif Cum Judicial Magistrate, Paramathi confirmed in the order dated 19.02.2016 made in CRP.No.6 of 2015 on the file of the learned Principal District and Sessions Court, Namakkal by allowing this Criminal Original Petition.

For Petitioner : Mr.N.Manokaran

O R D E R

This criminal original petition has been filed to set aside the order dated 06.03.2015 made in M.C.No.9 of 2013 on the file of the learned District Munsif Cum Judicial Magistrate, Paramathi confirmed in the order dated 19.02.2016 made in Criminal Revision Petition No.6 of 2015 on the file of the learned District and Sessions Court, Namakkal.

2. For the sake of convenience, the parties will be referred to, by their name.

3. Srimathi got married to one Chandrasekaran on 22.08.2012 and thereafter, their matrimonial life ran into rough weather and they got estranged.

4. Srimathi initiated proceedings under Section 125 Cr.P.C in M.C.No.9 of 2013 against Chandrasekaran before the District Munsif cum Judicial Magistrate, Paramathi. The Judicial Magistrate by an order dated 06.03.2015 directed Chandrasekaran to pay Rs.1,700/- per month as maintenance from 06.09.2013, aggrieved by which, Chandrasekaran filed Criminal Revision Petition No.6 of 2015 before the Principal Sessions Court, Namakkal. Further, Chandrasekaran filed CMP.No.327 of 2015 in CrI.R.P.No.6 of 2015, before the Principal Sessions Court, Namakkal, for interim stay of the order dated 06.03.2015 passed by the District Munsif cum Judicial Magistrate, Paramathi, in M.C.No.9 of 2013, in which, the Principal Sessions Judge, Namakkal, directed Chandrasekaran to pay the arrears of maintenance as ordered by the trial Court and also, pay Rs.2,000/- to the District Legal Services Authority, Namakkal. Aggrieved by the order passed by the Principal Sessions Court, Namakkal, Chandrasekaran approached this Court in CrI.OP.No.23777 of 2015, in which, this Court passed the following order on 22.09.2015:

"7. Though this Court does not find any serious infirmity in the order passed by the Sessions Court, yet it is seen that the Sessions Court has not provided any amount as maintenance, during the pendency of the revisional proceedings. Under such circumstances, this Court is of the view that the order passed by the Sessions Court would be modified. Accordingly, the order dated 27.04.2015 in CMP.No.327 of 2015 in CRP.No.6 of 2015 passed by the learned Principal Sessions Judge, Namakkal is modified as follows :

a) The petitioner shall pay 50% of the arrears of maintenance calculated from 06.09.2013 to 27.04.2015. This amount shall be deposited by the petitioner/husband to the credit of M.C.No.9 of 2013 before the District Munsif cum Judicial Magistrate, Paramathi, within four weeks from the date of receipt of a copy of this order. On such deposit, the respondent/wife is entitled to withdraw the same.

b) The petitioner/husband shall continue to pay a sum of Rs.1,000/- from May 2015 as monthly maintenance by depositing the same to the credit of M.C.No.9 of 2013 before the learned District Munsif cum Judicial

Magistrate, Paramathi till disposal of CRP.No.6 of 2015. On such deposit, the respondent/wife will be entitled to withdraw the same. The sum of Rs.1,000/- payable from May 2015 to September 2015 shall be deposited within two weeks from the date of receipt of a copy of this order. From October 2015 onwards, the petitioner/husband shall deposit the sum of Rs.1,000/- per month before 10th of every English calendar month.

8. On the aforesaid conditions, there will be an interim stay of the operation of the order dated 06.03.2015 in M.C.No.9 of 2013 till the disposal of CRP.No.6 of 2015 by the Sessions Court. If the petitioner/husband does not comply with this order, it is open to the respondent/wife to proceed against this petitioner under Section 128 of Cr.P.C.,"

5. It is seen that Chandrasekaran has not complied with the order dated 22.09.2015 passed by this Court. The Principal District and Sessions Judge, Namakkal, has dismissed the Crl.R.P.No.6 of 2015 on 19.02.2016, on the short ground that Chandrasekaran has not complied with the direction issued by this Court, aggrieved by which, Chandrasekaran is before this Court for a direction under Section 482 Cr.P.C.

6. Mr.Manokaran, learned counsel for Chandrasekaran submitted that in the order dated 22.09.2015 passed by this Court in Crl.O.P.No.23777 of 2015, this Court issued a direction that in case, Chandrasekaran, does not comply with the order passed, Srimathi will be entitled to proceed against him under Section 128 Cr.P.C. This Court has not stated that the Crl.R.P.No.6 of 2015 will be automatically dismissed for non-compliance of the order.

7. There appears to be some force in the contention of Mr.Manokaran, the learned counsel for Chandrasekaran. If this case is admitted and notice is ordered to Srimathi, it will not see the light of the day. Therefore, the order dated 19.02.2016 in Crl.R.P.No.6 of 2015 passed by the Principal District and Sessions Judge, Namakkal, is hereby set aside on the short ground that it has been dismissed for non-compliance of the order passed by this Court in Crl.OP.No.23777 of 2015. Of course, it can be an additional ground for dismissing the criminal revision petition but it cannot be the only ground for dismissing the petition.

8. In the result, this criminal original petition is allowed and the order dated 19.02.2016 in Crl.R.P.No.6 of 2015 passed by the Principal District and Sessions Judge, Namakkal, is hereby set aside and the Crl.R.P.No.6 of 2015 shall be taken up, heard and disposed of by the Principal District and Sessions Judge, Namakkal, within a within a period of one month from the date of receipt of a copy of this order. Even if, Chandrasekaran does not appear before the Principal District and Sessions Court and adopts dilatory tactics, the learned Principal District and Sessions Judge is entitled to peruse the records and exercise the jurisdiction under Section 397 Cr.P.C in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

9. This order is without prejudice to Srimathi invoking proceedings under Section 128 Cr.P.C. against Chandrasekaran for non-compliance of the order passed in Crl.O.P.No.23777 of 2015.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sms
To

1. The Principal District Munsif Cum Judicial Magistrate,
Paramathi.
2. The District and Sessions Court,
Namakkal.

+1 CC to M/s. N. Manokaran, Advocate Sr.No.53020

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RP (CO)
MD : 20/09/2016

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