

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.21343 of 2016
and Crl.M.P.No.9889 of 2016 & Crl.M.P.No.9929 of 2016

K.Thirumalaisamy

... Petitioner

Vs

Vijayalakshmi

... Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order dated 28.01.2016 passed in Criminal Revision Petition No:15 of 2015 by the learned III Additional District Sessions Judge, Gopichettipalayam confirming the order passed in M.C.No.4 of 2006 dated 17.03.2015 on the file of Judicial Magistrate, Sathyamangalam.

For petitioner : Mr.H.Nazirudeen

O R D E R

This petition has been filed seeking to set aside the order dated 28.01.2016 passed in Criminal Revision Petition No:15 of 2015 by the learned III Additional District Sessions Judge, Gopichettipalayam confirming the order passed in M.C.No.4 of 2006 dated 17.03.2015 on the file of Judicial Magistrate, Sathyamangalam.

2. Heard the learned counsel for the petitioner.

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

4. Vijayalakshmi got married to Thirumalaisamy on 16.02.1983 and for some reasons they got estranged. According to Vijayalakshmi, she has a son by name Ramesh, through Thirumalaisamy. Vijayalakshmi filed M.C.No.4 of 2006 before the Judicial Magistrate, Sathyamangalam u/s.125 Cr.P.C. for maintenance. Before the trial Court, Thirumalaisamy took a plea that Vijayalakshmi was having an illegal affair with her deceased uncle-Viswanathan, who has died by then and therefore, he got divorce by customary practice and got married to one Palaniammal, through him he has got two children. Therefore, Thirumalaisamy contented that Vijayalakshmi will not be entitled to maintenance.

5. On behalf of Vijayalakshmi, one witness was examined and four documents were marked. On behalf of Thirumalaisamy one witness was examined and 17 exhibits were marked. The trial Court after considering the rival submissions, negatived the contention of Thirumalaisamy and directed him to pay Rs.2,000/- as monthly maintenance to Vijayalakshmi. Aggrieved by the order dated 17.03.2015 in M.C.No.4 of 2006 passed by the Judicial Magistrate, Thirumalaisamy filed Crl.R.P.No.15 of 2015 before the Sessions Judge, Gopichettipalayam and the learned Sessions Judge by order dated 28.01.2016, dismissed the Criminal Revision Petition and confirmed the order passed by the Magistrate. Aggrieved by the order passed by the Courts below, Thirumalaisamy is before this Court u/s.482 Cr.P.C.

6. Under section 397(3) Cr.P.C., when a person elects to move the Sessions Court, he will be precluded there filing a second revision before this Court. However, in extraordinary cases, where grave injustice has occurred, a petition u/s.482 Cr.P.C. is maintainable. In this case, it has to be seen by this Court, whether any grave injustice has occurred on account of the orders passed by the Courts below.

7. The learned counsel for Thirumalaisamy contended that Thirumalaisamy need not have to pay maintenance to Vijayalakshmi as she has led a wayward life and has divorced her in a customary manner. He also contended that the marriage was in the year 1983, but the petition was filed only in the year 2006.

8. These contentions were considered by both the Courts below and they have been negatived. Customary form of divorce cannot be countenanced in law after coming into force of codified law governing marriages. Both the Courts have found that, Thirumalaisamy had not let in satisfactory evidence to establish that Vijayalakshmi was living a wayward life. Apart from that, the sum of Rs.2,000/- that has been ordered by the Courts below is a paltry amount, which does not warrant interference by this Court.

9. In the result, this petition is devoid of merits and the same is dismissed. Consequently Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

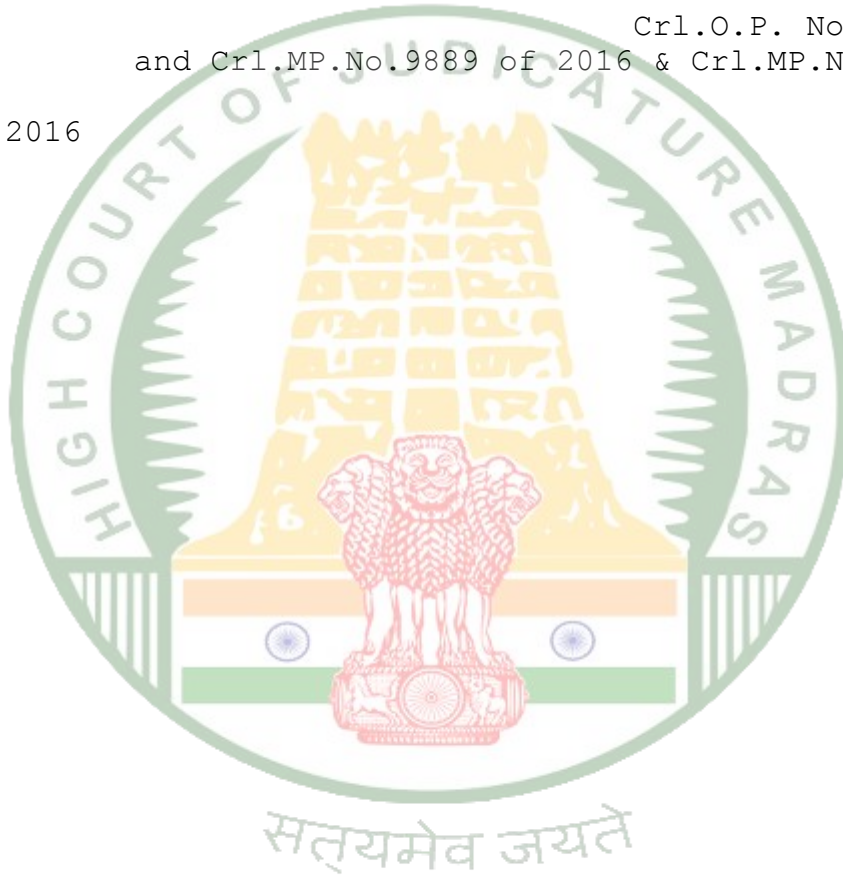
1. The III Additional District Sessions Judge,
Gopichettipalayam

2. The Judicial Magistrate,
Sathyamangalam.

+1cc to Mr.H.Nazirudeen, Advocate, S.R.No.54776

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