

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2016

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.25654 of 2016

and

Crl.MP.12517 of 2016

B.Haniffa ...Petitioner

Vs.

1. Mubeen Taj,
2. Minor Mansoor
3. Minor Nadheem
Both represented by their mother and guradian
Mubeen Taj. ... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C to set aside the orders passed in Criminal Revision Petition No.8 of 2016, dated 18.08.2016 on the file of the Principal District and Sessions Judge, Krishnagiri confirming the order in M.C.No.2/2010 dated 17.02.2016 by the Chief Judicial Magistrate, Krishnagiri.

For Petitioner : Mr.M.Md.Ibrahim Ali

O R D E R

This criminal original petition has been filed to set aside the orders dated 18.08.2016 passed in Criminal Revision Petition No.8 of 2016, on the file of the Principal District and Sessions Court, Krishnagiri confirming the order in M.C.No.2/2010 dated 17.02.2016 passed by the Chief Judicial Magistrate, Krishnagiri.

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

3. Mubeen Taj got married to one Haniffa on 05.02.2011 and they have two children viz., Mansoor and Nadheem through the wedlock. Mubeen Taj filed MC.No.2 of 2010 before the Chief Judicial Magistrate, Krishnagiri under Section 125 Cr.P.C. seeking maintenance for herself and for her two children. The trial Court issued notice to Haniffa and he entered appearance and contested the trial and adduced evidence on both sides. Two

witnesses were examined on the side of Mubeen Taj and four witnesses were examined on the side of Haniffa. Five documents were marked on the side of Mubeen Taj and six documents were marked on the side of Haniffa. After appraising the evidence, the trial Court by order dated 17.02.2016, has dismissed the claim of maintenance for Mubeen Taj, but has ordered a sum of Rs.1,000/- per month each payable to minors Mansoor and Nadheem from the date of filing of the petition viz. 12.01.2010. Challenging the order, Haniffa filed CrI.RC.No.8 of 2016 and the Principal District and Sessions Judge, Krishnagiri heard both sides and dismissed the same on 18.08.2016, challenging which, Haniffa is before this Court.

4. Learned counsel appearing for the petitioner submitted that Mubeen Taj deserted Haniffa in the year 2008 itself and Haniffa met with an accident and lost his earning capacity. He also submitted that Haniffa has lost his job.

5. At the outset, it is trite that under Section 397(3) Cr.P.C., when once the parties approach the Sessions Court, invoking its revisional jurisdictions, the revision at the instance of the same party, is not maintainable. However, in extraordinary circumstances, where the order passed by the Court below suffers from jurisdictional illegality, this Court can interfere under Section 482 Cr.P.C. In this case, this Court does not find any jurisdictional illegality either by the trial Court or by the revisionary Court inasmuch as both the Courts have analysed the evidence adduced by both sides including the claim of maintenance, and ordered a sum of Rs.1,000/- per month as maintenance for each of the children viz., Mansoor and Nadheem. This Court does not find any infirmity in the claim of maintenance, taking into consideration, the prevailing cost of living in the state.

6. Learned counsel appearing for the petitioner submitted that he is also prepared to deposit 50% of the claim amount.

7. Mubeen Taj has filed CMP.No.300 of 2016 before the Chief Judicial Magistrate, Krishnagiri under Section 128 Cr.P.C and action has been initiated, thereby the petitioner is willing to deposit 50% of the claim amount now before this Court.

8. In the considered opinion of this Court, liberty is given to Haniffa to approach the Chief Judicial Magistrate, Krishnagiri and deposit the amount so that the children can make use of the amount for their studies and other purposes. The Chief Judicial Magistrate, Krishnagiri shall also give some reasonable time to Haniffa for making payment of the arrears of maintenance.

With the above direction, this petition is dismissed.

Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

mk

To

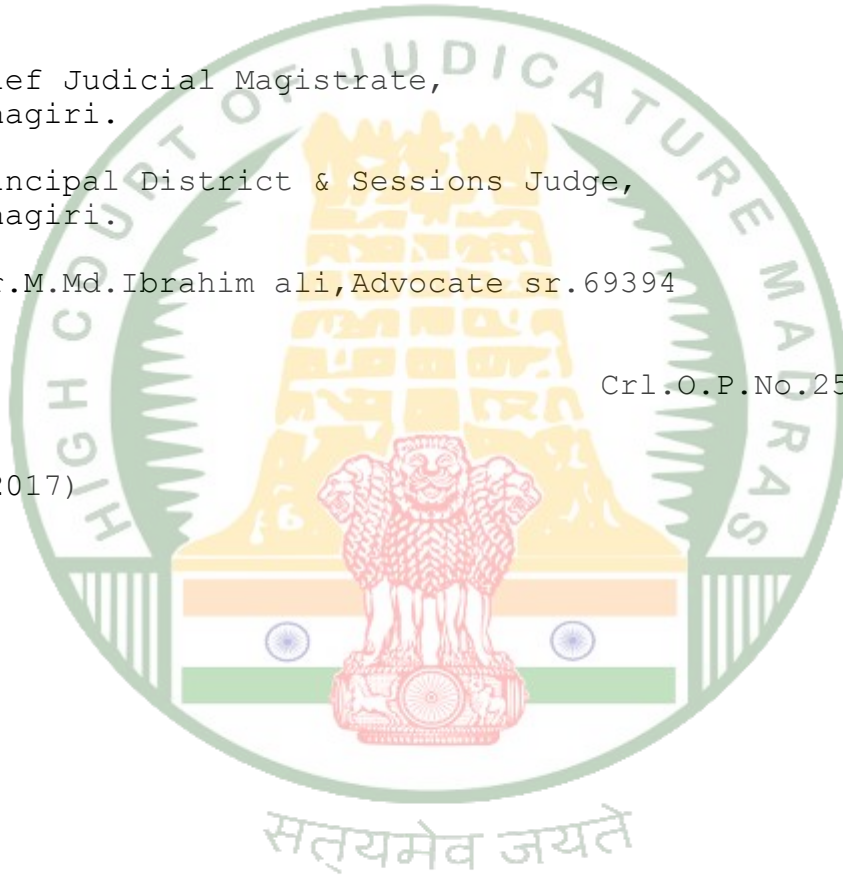
1. The Chief Judicial Magistrate,
Krishnagiri.

2. The Principal District & Sessions Judge,
Krishnagiri.

+lcc to Mr.M.Md.Ibrahim ali,Advocate sr.69394

CrI.O.P.No.25654 of 2016

scd(co)
ss(12/01/2017)



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