



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.06.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

Cr1.RC (MD) No.602 of 2015

and

M.P. (MD) No.1 of 2015

K.S.S.Raj

... Petitioner / Petitioner /
Petitioner / 6th Respondent

-vs-

A.Muthumari

... Respondent / Respondent /
Respondent / Respondent

PRAYER: Criminal Revision Petition is filed, under Section 397 r/w 401 Cr.P.C., to call for the entire records relating to Cr1.A.No.1 of 2015 in Cr1.M.P.No.4719 of 2013 in M.C.No.76 of 2014 (Cr1.M.P.No.1828 of 2010) on the file of the VI Additional District Court, Madurai and to set aside the same.

For Petitioner: Mr.K.S.S.Raj
Party-in-person

For Respondent: Mr.Rahamadullah

O R D E R

R6 in M.C.No.76 of 2014 aggrieved by the imposition of certain conditions in allowing his Cr.M.P.No.4719 of 2013 in Cr.M.P.No.1828 of 2010 in M.C.No.76 of 2014, on the file of the learned Additional Mahila Judicial Magistrate, Madurai as confirmed by the learned VI Additional District Judge, Madurai, vide Judgment dated 06.11.2015, in C.A.No.1 of 2015, has directed this revision.

2. The revision petitioner's brother married the respondent, who is the petitioner in the petition filed under D.V.Act. It is pending before a learned Judicial Magistrate in Madurai. The revision petitioner is also related to the respondent as he being a brother of her husband. Their father Mr.Kathirvelu and mother <https://hdservices.scois.gov.in/hdservices> and other relatives are also figuring as respondents in the D.V.Act case. The said case is going on. On a particular day, the revision petitioner did not attend the Court. So, he was



set ex parte. Subsequently, he filed Cr.M.P.No.4719 of 2013 to set aside the same.

3. The learned Trial Judge, by his Order dated 02.12.2014, allowed the petition on condition that the petitioner should deposit Rs.1,000/- as costs.

4. Aggrieved, the petitioner preferred appeal, in C.A.No.1 of 2015, before the learned VI Additional District Judge, Madurai, and the Appellate Judge, by his Judgment dated 06.11.2015, dismissed his appeal.

5. So, the petitioner is before us.

6. The petitioner, as party-in-person, would submit that he has filed the counter. He is diligently taking care of his interest in the litigation initiated by his brother's wife. He has also given reasons for his absence. In such circumstances, such conditional order need not have been passed.

7. On the other hand, the learned counsel for the respondent would submit that in the facts and circumstances, taking note of the entire facts of the case, the Court has imposed costs upon him.

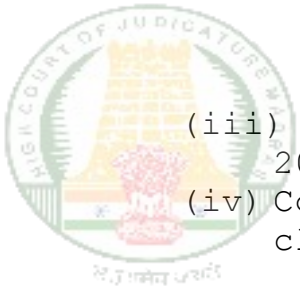
8. I have anxiously considered the rival submissions, perused the impugned Judgment and also the materials on record.

9. It is pertinent to note that the ex parte order was passed on 29.07.2013. Subsequently, the petitioner had filed setting aside petition on 27.08.2013. The Trial Court decided to allow the petition and set aside the ex parte order. Still the case is pending. Still fight is going on. On the one side Muthumari and on the other side Kathirvelu's family is fighting. In such circumstances, the Court below could have been liberal. If there is any motive or the absence of the petitioner is wilful and intended to deflect the course of justice, some sort of conditional orders could have been passed. But, the present case is not such a one. In such circumstances, imposing costs of Rs.1,000/- is unnecessary. It is un-called for. It is punitive in nature.

10. Ordered as under:

(i) This revision is allowed.

(ii) The Judgment, dated 06.11.2015, passed in C.A.No.1 of 2015, by the learned VI Additional District Judge, Madurai, confirming the Order, dated 02.12.2014, passed in Cr.M.P.No.4719 of 2013 in



- (iii) Cr.M.P.No.4719 of 2013 in Cr.M.P.No.1828 of 2010 (M.C.No.76 of 2014) is allowed without costs.
(iv) Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar (CS)

To:

1. The VI Additional District Judge,
Madurai.
2. The Additional Mahila Judicial Magistrate,
Madurai.

+1cc to Mr.N.Rahamadullah, Advocate, Sr.No.29737

krk

JM/DB/17.06.2016/3P-4C

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