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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.08.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

Crl. R.C. (MD) Nos.539 and 540 of 2016

Selvam

... Revision Petitioner in
Crl.R.C.No.539/2015

1.Selvam

2.Kosalai

... Revision Petitioners in
Crl.R.C.No.540/2015

-vs-

Karpagam

...Respondent in both petitions

COMMON PRAYER: Criminal Revision Petitions are filed, under Section 397 r/w 401 Cr.P.C., to call for the records relating to the order dated 05.03.2015 made in C.A.Nos.84 of 2012 and 157 of 2013 on the file of the Principal Sessions Judge, Srivilliputtur and set aside the same and consequently direct the Principal Sessions Judge, Srivilliputtur to pass appropriate orders afresh.

For Petitioners in both : Mr.V.Nagendran
Petitions

For Respondent in both : Karpagam - Party-in-person
Petitions

COMMON ORDER

In view of the fact that the parties are spouses and the factual matrix are intermixed, they are heard together and are being disposed of by this common order. 2.In Crl.R.C.(MD) No.540 of 2016, Selvam and Kosalai, who are son and mother respectively seeks to set aside the order of dismissal passed by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputtur in C.A.No.157 of 2013.

3.In Crl.R.C.(MD) No.539 of 2016, the said Selvam seeks to set aside the order of dismissal passed by the said Sessions Judge in C.A.No.84 of 2012.

4.Kosalai's son Selvam married Karpagam according to Hindu Rites and Customs. There were lot of misunderstanding between the spouses. The spouses have separated. They are spending major part of their precious time in Courts in Aruppukottai, Srivilliputtur and consequently precious part of their life is wasted. Karpagam, the party-in-person had gained sufficient knowledge on Court matters.



5.The Court of Judicial Magistrate at Aruppukottai witnessed bitter legal battle between these spouses. Karpagam prosecuted Selvam in S.T.C.No.1585 of 2011 for an offence under Section 500 I.P.C. He was convicted and sentenced to 2 months S.I. and fined Rs.2,000/- with a default sentence. As against that Selvam preferred C.A.No.84 of 2012 before the learned Principal Sessions Judge, Virudhunagar District at Srivilliputtur.

6.Karpagam sought for certain reliefs under the Domestic Violence Act as against her husband and her mother-in-law. Here also Karpagam won. Karpagam was granted certain reliefs. As against that Selvam and Kosalai have preferred C.A.No.157 of 2013 before the said Sessions Judge.

7.Both the Criminal Appeals came before the said Appellate Judge for several hearings. Karpagam was punctual but not Selvam, but his lawyer was present. Subsequently, he too disappear. The appeals were adjourned from time to time. Ultimately, bored with this state of affair, the learned appellate Judge dismissed both appeals for default. As against that Selvam and Kosalai have filed these revisions.

8.The learned counsel for the revision petitioners contents that as on date the matters were not adjudicated on merits and they seek an opportunity for adjudication of the matter by the appellate Court on merits. They are not going to drag on the matter.

9.On the other hand, Karpagam, party-in-person would submit that in order to evoke sympathy of the Court, her heartless husband who does not pay the maintenance amount sheds crocodile tears.

10.In reply, the learned counsel for the petitioners would submit that even during these proceedings part by part substantial amount was paid to her.

11.Instead of doing any research into this matter, let us think of a pragmatic solution. Legally speaking the dismissal of C.A.Nos.84 of 2012, which has been dismissed for default is not correct. Because it is a criminal appeal. If the lawyer fails to appear in the Criminal Appeal, the Court should have taken some steps for giving a fair hearing even to an absenting appellant. (See Article 22(1) and 39-A of Constitution of India and Section 303 and 304 Cr.P.C.) Because there is no exparte disposal in criminal law. Whereas the situation in Domestic Violence Act is slightly different because there is no complainant, there is no offence. But only a matrimonial case. Only in rare occasion there will be a criminal case ie.,when the order passed by the Court is refused to be carried out by the



respondent. Now, it is clear that as on date both the criminal appeals were not adjudicated by the appellate Court. But we also aware of the fact that Selvam has not wholeheartedly honoured the order passed by the trial Court with regard to payment of maintenance amount.

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12. In view of the above, we pass the following order:

(1) These revisions are allowed.

(2) The order of dismissal passed by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputtur in C.A.Nos.84 of 2012 and 157 of 2013 are set aside.

(3) The learned Principal Sessions Judge shall restore C.A.No.84 of 2012 and C.A.No.157 of 2013 to file.

(4) Both the parties shall appear before the said Judge on 22.08.2016 without fail.

(5) The learned Principal Sessions Judge, shall dispose of C.A.Nos.84 of 2012 and 157 of 2013 within two weeks from the date of their appearance on merits.

(6) The learned Principal Sessions Judge, shall report to this Court about the disposal of the appeals.

(7) It is made clear that the enforcement of the order of the trial Court passed in M.C.No.48 of 2013 shall go on.

(8) It is also made clear that the learned counsel for Selvam and Kosalai and the party-in-person Karpagam shall cooperate with the appellate Judge. Even if they failed to do so, the learned Judge shall dispose of the appeals in accordance with law.

Sd/
Assistant Registrar(AS)

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Sub Assistant Registrar.

1. The Principal Sessions Judge,
Virudhunagar District
at Srivilliputtur.

2. The Judicial Magistrate,
Aruppukkottai,
Virudhunagar District.

+1CC to M/S.V.Nagenthran, Advocate, SR.No. 43271
+2CC to M/S.R.karpagam, Party-in-Person SR.No. 43222, 43223

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