

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2017

CORAM :

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRIMINAL REVISION Nos.797, 798 & 799 of 2015
and
Crl.M.P.No.1 of 2015

N.Rajkumar .. Petitioner in all Crl.Rcs.

Vs.

1 . Mrs. Samatha ... 1st Respondent in all Crl.RCs

2 . The Chairman,
Chennai Port Trust,
Chennai-600 001. ... 2nd Respondent in Crl.R.C.
No.797 of 2015

Prayer:

Crl.R.C.No.797 of 2015

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. to set aside the order dated 24.06.2015 passed in C.M.P.No.2060 of 2014 in S.T.C.No.1520 of 2009 by the Judicial Magistrate, Alandur.

Crl.R.C.No.798 of 2015

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. to set aside the order dated 19.05.2015 passed in C.M.P.No.3919 of 2015 in S.T.C.No.1520 of 2009 by the Judicial Magistrate, Alandur.

Crl.R.C.No.799 of 2015

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. To set aside the order dated 19.05.2015 passed in C.M.P.No.3920 of 2015 in S.T.C.No.1520 of 2009 by the Judicial Magistrate, Alandur.

For Petitioner in all Crl.R.Cs. : M/s M.Ravibharathi

For R1 in all CrI.R.Cs. : M/s Thilagavathi

For R2 in CrI.R.C.No.797 of 2015: No appearance

COMMON ORDER

The petitioner is the husband of the first respondent. The first respondent/wife filed a petition under Section 12 r/w Sections 18,19, 20(a)(a),(d), (3), 21 and 22 of the Protection of Women from Domestic Violence Act 2005 in S.T.C.No.1520 of 2009 before the Judicial Magistrate, Alandur seeking various reliefs. After trial, the court below, passed an order on 10.09.2012, directing the petitioner to pay a sum of Rs.5,000/- as monthly maintenance to the respondent/wife. Subsequently, since the maintenance amount has not been paid by the petitioner, the respondent/wife filed a petition in C.M.P.No.2060 of 2014 to attach the salary of the petitioner herein for the recovery of arrears of maintenance amount. Thereafter, the petitioner herein filed an application in C.M.P.No.3920 of 2015 seeking to set aside the order dated 10.09.2012 stating that the same was not passed on merits as it was an exparte along with an application in C.M.P.No.3919 of 2015 to condone the delay of 10 days in filing the application to set aside the exparte order.

2. The court below, by an order dated 19.05.2015, dismissed both the petitions holding that the earlier order dated 10.09.2012 was not an exparte order and during enquiry, the respondent/ wife had examined 3 witnesses on her side and the petitioner/husband also cross examined all the witnesses in full. Subsequently, when the matter was posted for defence witness, the respondent/husband did not examine any witnesses despite several opportunities were being given to him. Thereafter, having examined the evidences, both oral and documentary, the trial court passed order on merits, directing the petitioner/husband to pay a sum of Rs.5,000/- per month as maintenance to the respondent/wife. Since the said order was not an exparte order, the Court below dismissed the application of the petitioner. Subsequently, by an order dated 24.06.2015, the court below allowed the application in C.M.P.No.2060 of 2014, filed by the respondent/wife, for attachment of the salary. Now, challenging the above said orders, the petitioner/husband filed these Criminal Revision Petitions.

3. The learned counsel appearing for the petitioner submitted that the order passed by the Court below in S.T.C.No.1520 of 2009 dated 10.09.2012 was an exparte order. According to him, petitioner was not given sufficient opportunities to produce the defence witness and the Court below

without considering the same, dismissed the applications holding that it was not an exparte order. The learned counsel for the petitioner further submitted that the petitioner is complying with the interim order passed by this Court and paying the maintenance at the rate of Rs.3000/- per month.

4. Per contra, the learned counsel appearing for the first respondent submitted that the order passed by the Court below in S.T.C.No.1520 of 2009 dated 10.09.2012 was not an exparte order and it was passed on merits after a full fledged enquiry. Totally three witnesses were examined on the side of the respondent/wife in chief and they were cross examined in full on behalf of the petitioner/husband. Thereafter, the matter was posted for the defence evidence for several hearings. Since, the petitioner herein did not appear either in person or through his counsel, a detailed order came to be passed by the Court below on merits. Hence, it was not an exparte order.

5. I have considered the rival submissions on both sides and perused the materials available on record.

6. As rightly contended by the learned counsel appearing for the first respondent, the earlier order passed by the Court below in S.T.C.No.1520 of 2009 dated 10.09.2012 was not an exparte order. The respondent/wife examined 3 witnesses and marked 11 documents and the petitioner herein also cross examined all the witnesses. Despite several opportunities given to the petitioner, he had not chosen to examine any witness nor mark any document on his side. In the above circumstances, the Court below passed a detailed order on merits. Hence, the order cannot be construed as an exparte order. Thus, the petitions filed by the petitioner to set aside the exparte order as well as to condone the delay were not maintainable. After having considered the same, the trial Court had rightly dismissed both the applications. I do not find any illegality or irregularity in the said order. Therefore, the Crl.R.C.No.798 of 2015 and Crl.R.C.No.799 of 2015 are liable to be dismissed.

7. So far as the petition filed by the respondent/wife in C.M.P.No.2060 of 2014 for attachment of the salary of the petitioner is concerned, since the order passed by the court below has become final, the petitioner is liable to pay the maintenance amount as directed by the court below. As the petitioner failed to pay the maintenance amount, the respondent/wife, being left with no other remedy, she filed a petition seeking to attach the salary of the petitioner. The Court below having considered the same, passed an order of attachment, in which also I do not find any illegality or irregularity. Thus, the Civil Revision Petition No.797 of 2015 is also liable to be dismissed.

8. In the result, all the Criminal Revision Petitions are dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

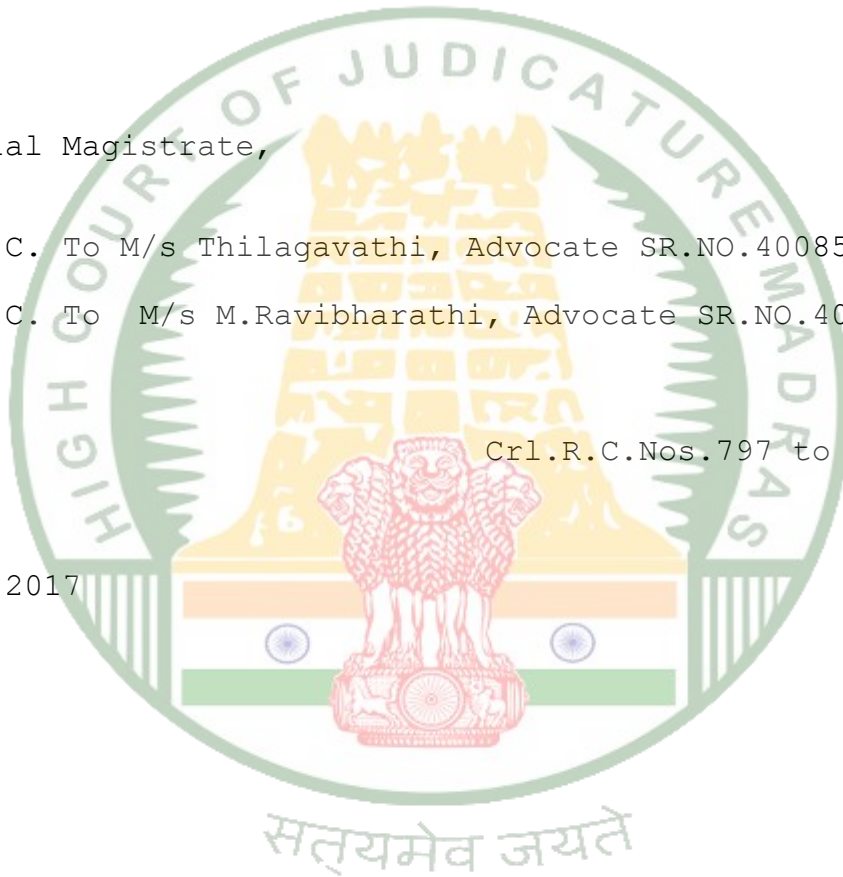
The Judicial Magistrate,
Alandur.

+1 C.C. To M/s Thilagavathi, Advocate SR.NO.40085.

+1 C.C. To M/s M.Ravibharathi, Advocate SR.NO.40113.

CrI.R.C.Nos.797 to 799 of 2015

SKS (CO)
ADD 31.10.2017



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