

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 10.03.2016

PRONOUNCED ON : 01.06.2017

CORAM :

THE HONOURABLE MR. JUSTICE B.GOKULDAS

Cr1.RC.No.1412 of 2012

Kanimozhi

.. Petitioner

Vs.

S.Sukumaran

.. Respondent

PRAYER : Revision is filed under Section 397 & 401 Criminal Procedure Code, to set aside the judgment dated 22.08.2012 passed by the Judicial Magistrate No.II, Pollachi in MC.No.15 of 2010.

For Petitioner : Mr.C.Veeraraghavan.

For respondent : Called absent - Set Exparte.

ORDER

This Criminal revision is filed against the order dated 22.08.2012 passed by the Judicial Magistrate No.II, Pollachi in MC.No.15 of 2010.

2. The brief facts of the case are as follows :-

The marriage between the petitioner/wife and the respondent/husband solemnized was on 22.02.2017 at Samathur, Pollachi as per Hindu rites and customs in the presence of elders of both the families. The petitioner lived with the respondent for about six months and thereafter they lived separately at Pappanaickenpalayam, Coimbatore. The respondent often scolded the petitioner with abusive words and caused mental harassment and also beaten her, as a result, the petitioner got aborted at 1 1/2 months. The respondent used to come at late night and states that he is going to the house of a girl and the petitioner should not question him about the illegal affairs of the respondent. The petitioner attempted to commit suicide, when the parents of the petitioner questioned, the respondent threatened to kill them. On 19.06.2007, the respondent called the parents of the petitioner over phone and informed them that he does not want to live with the petitioner and asked them to take back the petitioner with them. From that day onwards, the parties are living separately. Hence, the

petitioner issued legal notice dated 24.10.2008 to the respondent, to stop threatening. On 26.11.2008, the respondent replied falsely that he wants to live with the petitioner and filed HMOP.No.324 of 2009 on the file of the Family Court, Coimbatore for restitution of conjugal rights. Subsequently, the respondent got remarried with another girl. The respondent is working as a constable in Tamil Nadu Police Service at Coimbatore and earning more than Rs.17,000/-p.m. Hence, the petitioner filed the petition under Section 125 Cr.PC seeking for maintenance. The trial Court dismissed the claim of the petitioner under Section 125 Cr.PC. Aggrieved against the said order, the petitioner is before this Court by way of present revision.

3. The respondent/husband filed counter before the trial Court stating that the petitioner has not come forward to live together with the respondent. The allegations made out in the petition is false and without any basis. The petitioner being an educated lady, voluntarily evading herself to go for any work to get the maintenance from the respondent and the petitioner is the only daughter the parent in laws are having sufficient source of income to maintain their daughter. Hence, prays for dismissal of the petition.

4. The trial Court after hearing the arguments of both sides and upon perusal of oral and documentary evidences adduced on either side, dismissed the claim of the petitioner under Section 125 Cr.PC.

5. Heard the learned counsel for the petitioner and perused the records. Notice was duly served on the respondent, there is no representation on behalf of the respondent either in person or through the learned counsel on record, the name of the respondent is printed in the cause list, the respondent was called absent and hence set exparte.

6. The learned counsel for the petitioner contended that the petitioner/wife left the matrimonial home at the instance of the respondent/husband. The trial ought not to have considered the order obtained by the respondent for restitution of conjugal rights. The trial Court failed to consider the cruelty, harassment and mental agony undergone by the petitioner in the hands of the respondent. The order of the trial Court is erroneous in dismissing the application filed by the petitioner under Section 125 Cr.PC.

7. In support of his contention, the learned counsel for the petitioner relied on the catena of judgments :-

1. CDJ 1990 APHC 290 - G.Sundrababu v. Udaya Bhanu.
2. CDJ 1992 MHC 328 - Balasundaram V. Santhi.
3. CDJ 2006 MHC 1474 - Vinayagam v. Aruna and another.
4. (2008) 3 MLJ (crl) 723 - V.Balu v. Kalyani.
5. (2010) 1 MLJ (crl.) 1142 - Amutha @ Symaladevi v. K.Thirumoorthy @ Thirumalaisamy.

8. On perusal of the entire records and the decisions relied on by the counsel for the petitioner, the divorced wife is also entitled to claim maintenance especially when there is no evidence to show that she was having sufficient income to maintain herself. There is no proof or whatsoever to establish that those lands are yielding sufficient income to maintain herself and the respondent has not produced any document to show that the petitioner was getting ample income to maintain herself.

9. The remedy provided under Section 125 CrPC is totally for a different purpose. This remedy does not oust the jurisdiction of the Family Court to award maintenance under Section 24 of the Act. The scope of the proceeding under Section 125 Cr.PC is very limited. It is purely a summary proceeding. Section 127 of the Cr.PC permits the Court to vary the order. Therefore, Section 125 Cr.PC operates in a entirely different sphere.

10. The learned trial Court has committed a jurisdictional error in dismissing the application filed by the petitioner under Section 125 Cr.PC. Therefore, the order impugned in this revision is liable to be set aside, and is accordingly set aside. The matter is remitted back to the trial Court for fresh consideration on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order, after giving opportunity to either side.

11. In the result, the criminal revision is allowed accordingly.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

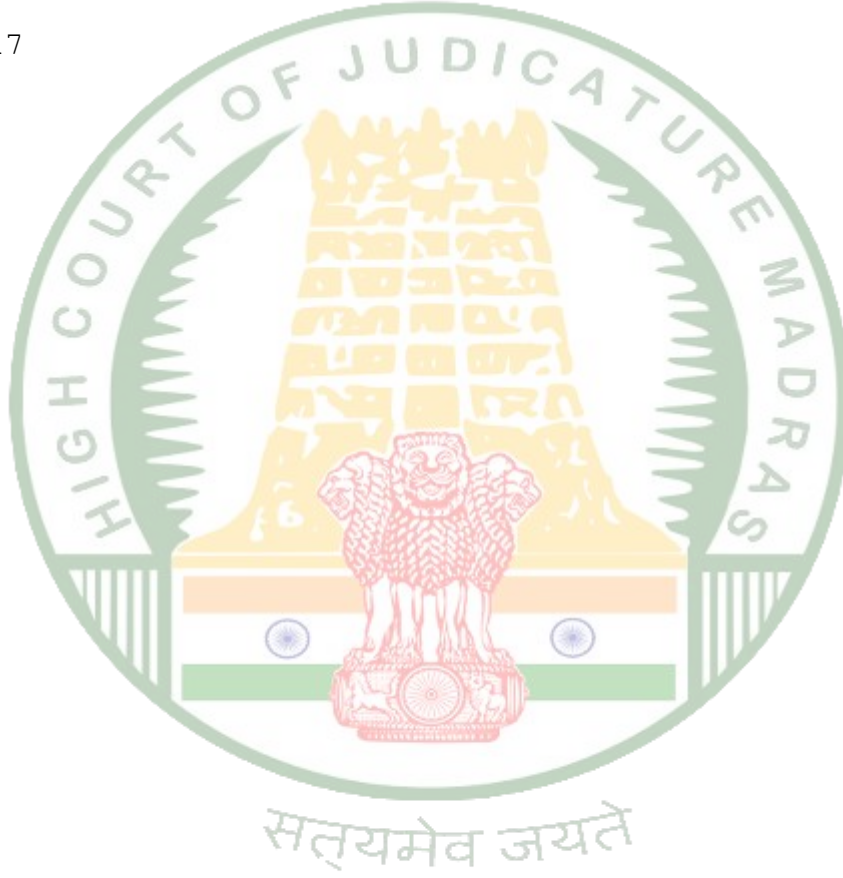
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To

1. The Judicial Magistrate No.II, Pollachi.
2. The Chief Judicial Magistrate,
Coimbatore.

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