

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.03.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.446 of 2011
and
M.P.No.1 of 2011

R.Chandrasahsan

.. Petitioner

Vs

Hajira

.. Respondent

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure to call for the records from the Judicial Magistrate No.II, Chidambaram pertaining to the impugned order in Crl.M.P.No.5771 of 2010 in M.C.No.5 of 2007, dated 02.12.2010 and set aside the same.

For Petitioner : Mr.P.Vijendran
For Respondent : M/s.P.Planinathan

ORDER

This petition has been filed by the petitioner under Section 482 Cr.P.C. seeking to set aside the impugned order dated 02.12.2010 of the learned Judicial Magistrate No.II, Chidambaram passed in Crl.M.P.No.5771 of 2010 in M.C.No.5 of 2007.

2. The petitioner had filed Crl.M.P.No.5771 of 2010 seeking to restore the ex parte order set aside petition which was dismissed on 6.8.2010 for non-payment of cost alleging that due to fever from 2.8.2010 to 15.8.2010, he could not be present before the Court on 6.8.2010 and could not taken steps to pay the cost. Due to non-payment of cost, Crl.M.P.No.1235 of 2010 was dismissed on 6.8.2010. Thereafter, also since the petitioner was continuously suffering ill-health, he could not file petition immediately to restore Crl.M.P.No.1235 of 2010. According to the petitioner, due to unavoidable circumstance, he could not present the Court on 6.8.2010 and pay the cost to the respondent. Now the petitioner is ready and willing to pay the cost of Rs.1000/- and prayed for setting aside the order of the learned Judicial Magistrate.

3. Resisting the petition, the respondent filed counter

stating that there was no provision in the Criminal Procedure Code for restoration of a petition, which was dismissed. It is stated that if this sort of ignoble tendency of the petitioner was allowed to continue one after the other, then it would defeat the very purpose for coming to this Court to seek recourse and to redress her grievance. There was no merit in the petition and prayed for dismissal of the same.

4. Upon consideration of the rival submissions, the learned Judicial Magistrate, dismissed the petition holding that though the petition was dismissed on 6.8.2010, the petitioner had filed petition for restoration only on 28.10.2010 after a gap of two months, which would show the petitioner's wilful negligence to attend the Court. Aggrieved by the same, the petitioner has filed this Criminal Original Petition.

5. I heard Mr.P.Vijendran, learned counsel for the petitioner and Mr.P.Planinathan, learned counsel for the respondent and also perused the materials available on record.

6. The learned counsel for the petitioner submitted that the Judicial Magistrate Court in which the petitioner had initiated M.C.No.5 of 2007 has no jurisdiction to entertain the petition, as the respondent parents were residing at Pangal, Sooramangalam Post, Thirukkuvalai Taluk, Tiruvarur District and her matrimonial place at Kokkaladi, Thiruthuraipoondi Taluk, Tiruvarur District and therefore, the proper jurisdiction was the Judicial Magistrate, Thiruthuraipoondi. But the respondent had filed M.C.No.5 of 2007 before the learned Judicial Magistrate, Chidambaram with dirty hand and maliciously. He would submit that the learned Magistrate presumed that the petitioner was wilfully absent, which is not correct.

7. The learned counsel for the petitioner further submitted that since the petitioner was suffering from fever continuously, he could not contact his counsel and pay the cost ordered by the Court on or before 5.8.2010 and the learned Judicial Magistrate erred in dismissing the petition and therefore, he prayed for setting aside the impugned order.

8. Reiterating the order of the learned Judicial Magistrate No.II, Chidambaram, the learned counsel for the respondent submitted that the petitioner had wilfully absented from appearing before the Court and also wilfully neglected to obey the order of the Court in paying the costs. He would submit that the learned Judicial Magistrate was right in dismissing the petition and there is no need to interfere with the same.

9. The petitioner and the respondent are husband and

wife. The respondent had filed M.C.No.5 of 2007 under Section 125 Cr.P.C. seeking maintenance, wherein the petitioner remained ex parte and ex parte order was passed by the learned Judicial Magistrate on 6.1.2010. To set aside the ex parte order, the petitioner had filed Crl.M.P.No.1235 of 2010, which was allowed by the learned Judicial Magistrate on payment of cost of Rs.1000/- to the respondent on or before 5.8.2010 and the petition was directed to be listed on 6.8.2010. Since the cost was not paid, by an order dated 6.8.2010, the learned Judicial Magistrate dismissed Crl.M.P.No.1235 of 2010. Thereafter, the petitioner had filed petition to restore the Crl.M.P.No.1235 of 2010 which was dismissed on 6.8.2010 for non-payment of cost.

10. By the impugned order, the learned Judicial Magistrate, dismissed the petition mainly on the ground that though the petition was dismissed on 6.8.2010, the petitioner had filed petition after a long gap of two years and in fact, the petitioner had wilfully absented from attending the Court and also there was no merit in the petition.

11. The petitioner pleaded that he was suffering from fever from 2.8.2010 to 15.8.2010. Due to fever, he could not able to attend the Court on 6.8.2010 and pay the cost and the non-appearance of the petitioner on 6.8.2010 is neither wilful nor wanton. The petitioner had also produced the Medical Certificate issued by a Senior Civil Surgeon, Medical Officer, Kodavasal dated 29.9.2010 to show that he was suffering from 2.8.2010 to 15.8.2010. To rebut the same, the respondent has not filed any material/proof.

12. Though the respondent contended that there was no provision in the Criminal Procedure Code to restore the petition which was dismissed for default, nothing has been produced to substantiate her contention. There is no hard and fast rule in entertaining petition for restoration of the petition which was dismissed for default and/or non-payment of cost as directed by the Court. The very purpose of proceedings under Section 125 of the Criminal Procedure Code is to decide civil right of the claimants through the process of Criminal Procedure Code and the learned Magistrate can order restoration on sufficient cause being shown because proceedings under section 125 of the Criminal Procedure Code are civil in nature.

13. Considering the nature of proceedings between the petitioner and the respondent, sufficient cause shown by the petitioner in not attending the Court on 6.8.2010, the fact that the petitioner is now facing summon in the proceedings initiated by the respondent under Section 125(3) Cr.P.C., in the interest of justice, the impugned order of the learned Judicial Magistrate needs interference, however, subject to certain

conditions enumerated hereunder.

14. The Criminal Original Petition is allowed on condition to pay a sum of Rs.5,000/- (Rupees Five Thousand only) to the respondent by the petitioner within a period of two weeks from the date of receipt of a copy of this order. The learned Judicial Magistrate is directed to take up Crl.M.P.No.1235 of 2010 for hearing and pass a formal order setting aside the ex parte passed against the petitioner and thereafter, directed to take up the main M.C.No.5 of 2007 and dispose of the same within a period of one month thereafter. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

vs

To

The Judicial Magistrate No.II,
Chidambaram.

+1cc to Mr. P.Vijendran, Advocate, S.R.No.18168
+1cc to Mr. P.Palaninathan, Advocate, S.R.No.18527

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M.P.No.1 of 2011

GN(15/11/2018)

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