



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.03.2017

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THE HON'BLE MR.JUSTICE P.N.PRAKASH
Crl.O.P. (MD) No.3174 of 2017

C.Sermalai @ Josephraj ... Petitioner

-vs-

S.Leela @ Irudhaiya Mary ... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order passed in Crl.R.P.No.8 of 2016 on the file of Principal District and Sessions Judge, Theni dated 16.08.2016.

For Petitioner : Mr.G.Karuppasamy Pandian

O R D E R

Leela got married to Sermalai and their marriage ran into rough weather. Leela filed M.C.No.7/2001 under Section 125 of the Code of Criminal Procedure before the Judicial Magistrate, Theni against Sermalai claiming maintenance, in which, the learned Judicial Magistrate, Theni had directed Sermalai to pay Rs.400/- per month as maintenance to Leela. Leela filed Crl.M.P.No.371/2014 in M.C.No.7/2001 under Section 128 of the Code of Criminal Procedure for enhancement of the maintenance amount, in which, the learned Judicial Magistrate, Theni, enhanced the maintenance amount from Rs.400/- to Rs.4,000/- by order dated 07.01.2016. Challenging the order dated 07.01.2016, Sermalai filed Crl.R.P.No.8/2016 before the Principal District and Sessions Judge, Theni, which was dismissed for default for non payment of Batta on 16.08.2016, challenging which, Sermalai is before this Court with this petition.

2. Heard the learned counsel for the petitioner. If this case is admitted, it will only prolong the agony of Leela, because Leela was not served notice even in Crl.R.P.No.8/2016.

3. In the considered opinion of this Court, the petitioner should be given one opportunity before the revisional Court to put forth his case. Under such circumstances, this petition is allowed on terms:

The order dated 16.08.2016 in Crl.R.P.No.8/2016 passed by the Principal District and Sessions Judge, Theni, is set aside and the matter is remanded back to the learned Judge, on condition that Sermalai the petitioner herein deposits a sum of Rs.5,000/- (Rupees

five thousand only) as cost to the credit of Crl.R.P.No.8/2016 before the Principal District and Sessions Judge, Theni. He shall appear before the Principal District and Sessions Judge, Theni, in Crl.R.P.No.8/2016 on 10.04.2017 at 10.30 a.m. The cost of Rs.5,000/- shall be paid to Leela as and when she appears before the Principal District and Sessions Judge, Theni. The petitioner shall pay the process fee and batta for service of notice on Leela before 13.04.2017. The learned Principal District Judge, Theni is directed to dispose of Crl.R.P.No.8/2016 within six months from 10.04.2017. If Sermalai does not cooperate, the learned Judge may call for the records from the trial Court and proceed to pass orders in Crl.R.P.No./2016. The Chief Judicial Magistrate, Theni is directed to inform Leela, who is the petitioner in Crl.M.P.No.371/2014 in M.C.No.7/2001 about the pendency of Crl.R.P.No.8/2016 before the Principal District and Sessions Judge, Theni, so that she can make arrangement to appear there.

Sd/-

Assistant Registrar(CSIII)

/True Copy/

Sub-Assistant Registrar

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To:

1. The Principal District and Sessions Judge, Theni
2. The Chief Judicial Magistrate, Theni.

COPY TO: S.Leela @ Irudhaiya Mary,
6th ward, Composed Yard Street,
Alli Nagaram, Theni, Theni District.

1CC TO MR. G. KARUPPASAMY PANDIAN, ADVOCATE SR: 16247

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