



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 29.06.2017
CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

WEB COPY

CRL.O.P.(MD).No.8036 of 2017
and
Crl.M.P.(MD)No.5465 of 2017

Robert : Petitioner/Petitioner/Respondent

-Vs-

1.Vanaja Rani
2.Minor Moulis Kirisan
Rep. by mother and natural guardian
Vanaja Rani : Respondents/Respondents/Petitioners

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code to set aside the order dated 19.10.2016 passed in Crl.R.C.No.21 of 2016 on the file of the learned Principal Sessions Judge, Trichy, modifying the order dated 10.03.2016 passed in M.C.No.192 of 2013 on the file of the learned Chief Judicial Magistrate, Trichy and dismiss the said M.C.No.192 of 2013.

For Petitioner: Mrs.Anbarasi Dhanaseelan

O R D E R

For the sake of convenience, the parties will be referred to by their name.

2. Robert got married to Vanaja Rani and through the wedlock, they have one child by name Moulis Kirisan. After marriage, the spouses got estranged and, therefore, Vanaja Rani filed M.C.No.66 of 2008 before the learned Chief Judicial Magistrate, Trichy, under Section 125 of the Code of Criminal Procedure against Robert, in which, the learned Chief Judicial Magistrate passed orders awarding maintenance of Rs.2,000/- to Vanaja Rani and Rs.1,000/- to Minor Moulis Kirisan. In the year 2013, Vanaja Rani filed a petition in M.C.No.192 of 2013 before the learned Chief Judicial Magistrate, Trichy, under Section 127 of the Code of Criminal Procedure for enhancement of maintenance and the same was allowed on 10.03.2016 awarding Rs.5,000/- per month to Vanaja Rani and Rs.7,000/- per month to minor Moulis Kirisan from 16.02.2013. Challenging the order passed by the learned Chief Judicial Magistrate, Robert filed Crl.R.C.No.21 of 2016 under Section 397 of the Code of Criminal Procedure before the Sessions Court, Trichy. The learned Judge, by order dated 19.10.2016, has confirmed the quantum of maintenance, but, has directed that the enhanced amount shall be payable only from 10.03.2016 and not from



16.02.2013. Challenging the order of the Sessions Court, Robert is before this Court.

3. Heard Mrs. Anbarasi Dhanaseelan, learned counsel for Robert.

4. The learned counsel for Robert submitted that Robert does not have the means to pay Rs.12,000/- per month as maintenance as he is only a military pensioner. She also submitted that Moulis Kirisan is studying in Kendriya Vidhyalaya and the annual fees is only Rs.7,200/-, but, whereas, the Trial Court has ordered Rs.7,000/- as maintenance per month, which is in excess.

5. This Court gave its anxious consideration to the submissions made by the learned counsel for Robert.

6. It is trite law that when once a party invokes the jurisdiction of the Sessions Court under Section 397 of the Code of Criminal Procedure, he is precluded from approaching the High Court once again invoking the revisional jurisdiction, in view of the bar under Section 397(3) of the Code of Criminal Procedure. However, a petition under Section 482 of the Code of Criminal Procedure is maintainable, if it is shown that the Courts below lacked the jurisdiction to pass the order or the order so passed is perverse. In this case, both the Courts below have the jurisdiction in law. Both the Courts have appreciated the evidence adduced by the parties and thereafter, they have determined the maintenance amount as stated above. Hence, this is not a fit case, in which, this Court should invoke its power under Section 482 of the Code of Criminal Procedure to interfere in the orders passed by the Courts below on facts. That apart, a sum of Rs.12,000/- that has been fixed by the Courts below cannot be said to be excess, especially, in the light of the fact that this petitioner, after his retirement from the Military, is now working in the police department.

7. In the result, this petition is devoid of merits and accordingly, the same is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

1.The Principal Sessions Judge, Trichy.

2.The Chief Judicial Magistrate, Trichy.

+One cc to Mr.C.Dhanaseelan, Advocate, SR.No.62600

SML

RL/4C/2P/KP/SAR2/10/7/2017

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Order made in

CRL.O.P. (MD).No.8036 of 2017

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