



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2017

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE M.DHANDAPANI

CrI.R.C.(MD) No.512 of 2017
and
CrI.O.P.(MD)No.4986 of 2013

CrI.R.C.(MD) No.512 of 2017

1.Kalaiselvi

2.Minor Anjana

(Minor represented by his Mother
and natural guardian Kalaiselvi
1st Petitioner)

... Petitioners

-Vs-

A.D.Nanthakumar

... Respondent

Prayer: Criminal Revision Petition filed under Section 397(1) and 401 of Criminal Procedure Code, to enhance the maintenance amount of Rs.5,000/- ordered by the III Additional District Judge, Trichy in CrI.R.C.No.62 of 2012 dated 18.01.2013 modifying the order of awarding to Rs.5,000/- from Rs.10,000/- as maintenance passed by the Chief Judicial Magistrate, Trichy in M.C.No.116 of 2011.

For Petitioners : Mr.Ramasamy
for Mr.R.Govindaraj
For Respondent : Mr.M.Gananangurunathan

CrI.O.P.(MD)No.4986 of 2013

A.D.Nantha Kumar

... Petitioner

-Vs-

1.Kalaiselvi

2.Minor Anjana

(Minor represented by his Mother
and natural guardian Kalaiselvi
1st Respondent)

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and set aside the order passed by the learned Additional District Judge (FAC), Trichy dated 18.01.2013 in CrI.R.C.No.62 of 2012 by modifying the order dated 17.10.2012 in M.C.No.116 of 2011 on the file of the learned Chief Judicial Magistrate, Trichy.



For Petitioner : No appearance
For Respondents : Mr. Ramasamy
for Mr. R. Govindaraj

WEB COPY

COMMON ORDER

The petitioners in CrI.R.C.(MD)No.512 of 2017 are the wife and daughter and the respondent is the husband of the first petitioner herein. For the sake of convenience, the parties are referred to as wife and husband.

2. The facts of the case are as follows:

The wife filed a maintenance case under Section 125 of Cr.P.C before the learned Chief Judicial Magistrate, Thiruchirappalli, in M.C.No.116/2011. After full fledged trial, the lower Court awarded maintenance to the tune of Rs.5,000/- each to the wife and the daughter, in toto Rs.10,000/-. Aggrieved against the said order passed by the lower Court, the husband filed a Revision in CrI.R.C.No.62 of 2012 on the file of the learned III Additional District Judge (FAC), Trichy. After elaborate arguments, the Revisional Court reduced the maintenance amount from Rs.10,000/- to Rs.5,000/- (Rs.2,500/- each) and also directed the husband to pay a sum of Rs.30,000/- as annual maintenance for both the wife and the child and the same shall be paid on or before 5th May of every year. As against the same, the wife and the husband filed CrI.R.C.(MD) No.512 of 2017 and CrI.O.P.(MD)No.4986 of 2013 respectively before this Court.

3. The learned counsel for the petitioners in CrI.R.C.(MD)No.512 of 2017 and the respondents in CrI.O.P.(MD)No.4986 of 2013 would submit that the wife is under the care of her parents and she is taking care of her child as well as her parents. Out of her meagre income, she was maintaining the entire family. Without considering the hardship suffered by the wife, the Revisional Court reduced the amount from Rs.5,000/- each to Rs.2,500/- each, which is unsustainable and therefore, the learned counsel prayed for enhancement of reasonable amount in order to maintain the family of the wife.

4. The learned counsel for the respondent/husband would submit that due to cruelty caused by the wife, he was forced to file a divorce petition. He would further submit that the wife employed as a Teacher in private school and she is earning Rs.15,000/- (Rupees Fifteen Thousand Only) per month. However, the husband is an employee in Kingfisher Airlines and his employer company is facing the heavy financial crises, hence, he is not able to earn as stated by the wife. Accordingly, he prays for allowing this Criminal Original Petition.

5. In support of his submissions, the learned counsel for the respondent relied on the following Judgments:

(a) *Rajan Kumar Machananda Vs. State of Karnataka* reported in 1990 SCC (CrI) 537, wherein at paragraph 2, it has been held as follows:



''2. Heard learned Counsel for the parties. The respondent- State had challenged the order before the Court of Sessions when the learned Magistrate before whom the matter was proceeding directed release of the truck in favour of the appellant. The Revisional Court dismissed the petition of the State. A second Revision did not lie at the instance of the State to the High Court in view of the provisions of Section 397(3) of Cr.P.C. Obviously, to avoid this bar, the application moved by the State before the High Court was stated to be under Section 482 Cr.P.C. asking for exercise of inherent powers. In exercise of that power, the High Court has reversed the order of the Magistrate as affirmed by the Sessions Judge. The question for consideration is as to whether the bar under Section 397(3) Cr.P.C. should have been taken note of to reject the revision at the instance of the State Government or action taken by the High Court in exercise of its inherent power has to be sustained. It is not disputed by counsel appearing for the State that the move before the High Court was really on application for revision of the order of the Magistrate releasing the truck. That is exactly what is prohibited under Section 397(3) Cr.P.C. Merely by saying that the jurisdiction of the High Court for exercise of its inherent power was being invoked the statutory bar could not have been overcome. If that was to be permitted every revision application facing the bar of Section 397(3) of the Code could be labelled as one under Section 482. We are satisfied that this is a case where the High Court had no jurisdiction to entertain the revision. The appeal is allowed and we set aside the order of the High Court. The Order of the Magistrate as affirmed by the Session Judge is upheld.''

(b) Rajathi Vs. C.Ganesan reported in 1999 SCC (Cri) 1118, wherein at paragraphs 9 to 13, it has been held as follows:

''9. We are not going into the question if the High Court on examining the case on merit was correct in coming to the conclusion that the wife was possessed of sufficient means and was able to maintain herself. In the present appeal, we are only concerned to see if the High Court was justified in invoking its inherent powers under Section 482 of the Code and we do not think the High Court was right.

10. In Krishnan & Anr. vs. Krishnaveni & Anr. [(1997) 4 SCC 241] this Court explained the scope and power of the High Court under Section 482 of the Code. The question before the Court was if in view of the bar of second revision under sub-section (3) of Section 397 of the Code was prohibited, inherent power of the High Court is still available under Section 482 of the Code. This Court said as under [SCC P.248, Para 10]:

''10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take



recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justice can be ensured only when trial is conducted expeditiously."

11. In the present case, the High Court minutely examined the evidence and came to the conclusion that the wife was living separately without any reasonable cause and that she was able to maintain herself. All this High Court did in exercise of its powers under Section 482 of the Code which powers are not a substitute for a second revision under sub-section (3) of Section 397 of the Code. The very fact that the inherent powers conferred on the High Court are vast would mean that these are circumscribed and could be invoked only on certain set principles.

12. It was not necessary for the High Court to examine the whole evidence threadbare to exercise jurisdiction under Section 482 of the Code. Rather in a case under Section 125 of the Code the trial court is to take a prima facie view of the matter and it is not necessary for the court to go into the matrimonial disputes between the parties in detail. The section provides maintenance at the rate of Rs.500/- per month. There is an outcry that this amount is too small. In the present case, however, we are quite surprised that the



court granted paltry amount of Rs.200/- per month as maintenance which was confirmed in the revision by the Sessions Court and the High Court thought it fit to interfere under Section 482 of the Code in exercise of its inherent jurisdiction.

WEB COPY

13. Whatever may be the merit of the case, the High Court wrongly exercised its jurisdiction under Section 482 of the Code in passing the impugned order. The appeal is allowed and the impugned order dated 04.12.1997 of the High Court is set aside.''

6. I have considered the rival submissions made by the learned counsel on either side.

7. The issue involved in these cases is whether the petition under Section 482 Cr.P.C., is maintainable in view of bar under Section 397(3) Cr.P.C.

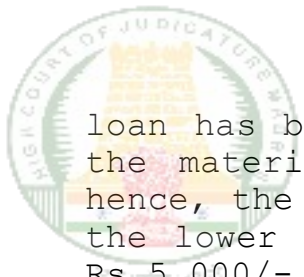
8. As per Section 397(3) Cr.P.C., if an application under this Section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

9. However the husband filed the criminal original petition against the order of revisional Court approaching inherent jurisdiction available under Section 482 Cr.P.C., which is bad in law in view of the judgments rendered by the Hon'ble Apex Court.

10. It is true that in the above said decision, the Hon'ble Apex Court has clearly held that in view of the prohibition under Section 397(3) Cr.P.C., the complainant or the accused cannot be allowed to take recourse to a second revision. However, this Court holds that the said provision is not absolute bar. The High Court can entertain a petition under Section 482 Cr.P.C. when there is serious miscarriage of justice and abuse of process of the Court or when mandatory provisions of law are not complied with, and if the the High Court feels that the inherent jurisdiction is to be exercised finding that there is grave miscarriage of justice, abuse of process of the Court, or the order of the trial Court as well as the lower appellate Court is perverse or incorrigible one.

11. However, in the present cases on hand, the husband did not show any miscarriage of justice or abuse of process of Court. In the absence of any materials, this Court cannot convert as the second revision Court. Accordingly, the criminal original petition is dismissed.

12. Though this Court rejected the prayer sought by the husband in the criminal original petition, the question is as to whether the wife is entitled to any relief in the criminal revision filed against the order of the learned session judge. It is an admitted fact that the lower appellate Court reduced the maintenance amount from Rs.10,000/- to Rs.5,000/- (each to Rs.2,500/-), by elaborately discussing the economical status of the husband and wife and with regard to the husband is concerned, his payment towards L.I.C, Car Loans and House Loans, on perusal of the material, the



loan has been obtained from the husband's employer and considering the material fact that the Kingfisher Airlines went on loss and hence, the husband is not able to pay the said amount. Accordingly, the lower Court reduced the maintenance amount from Rs.10,000/- to Rs.5,000/-.

WEB COPY

13. In view of the above discussions and decisions cited supra, this Court does not find any error in the order passed by the Lower Appellate Court. Accordingly, both the Criminal Revision Case and the Criminal Original Petition are dismissed and the order dated 18.01.2013 passed in Crl.R.C.No.62 of 2012 by the III Additional District Judge (FAC), Trichy, is confirmed.

Sd/-

Assistant Registrar (CSII)

/True Copy/

Sub-Assistant Registrar

To

1. The III Additional District Judge (FAC),
Mahila Court,
Trichy

2. The Chief Judicial Magistrate,
Trichy

+One cc to Mr.R.Govindaraj, Advocate, SR.No.84793

+One cc to Mr.K.Samidurai, Advocate, SR.No.85009

rmi/smn2

RL/5C/6P/JC/SAR1/20/12/2017

Crl.R.C. (MD) No.512 of 2017
and

Crl.O.P. (MD) No.4986 of 2013
01/11/2017