



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.11.2017

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Cr1.O.P.(MD)No.10831 of 2011
and
M.P.(MD)No.1 of 2011

Anbalagan

... Petitioner

Vs.

Gomathi

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to order, dated 20.01.2010 passed in Cr.R.P.No.31 of 2009 on the file of the learned I-Additional Sessions Judge (PCR Court), Thanjavur confirming the order dated 07.08.2009 passed in M.C.No.25 of 2004 on the file learned Judicial Magistrate No.I, Thanjavur and set aside the same.

For Petitioner : Mr.M.Karunanithi

For Respondent : Mr.D.Shanmugaraj Sethupathi

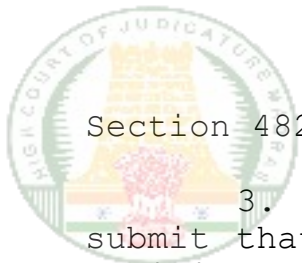
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O R D E R

This Criminal Original Petition is filed by the petitioner to set aside the order dated 20.01.2010 passed by the learned I-Additional Sessions Judge (PCR Court), Thanjavur in Cr.R.P.No.31 of 2009 confirming the order dated 07.08.2009 passed by the learned Judicial Magistrate No.I, Thanjavur in M.C.No.25 of 2004.

2. The facts leading to the disposal of the Criminal Original Petition are as follows:

M.C.No.25 of 2004 has been filed by the respondent/wife under Section 125 Cr.P.C., claiming maintenance of Rs.3,000/- per month against the petitioner and the same was allowed by the learned Judicial Magistrate No.I, Thanjavur. Aggrieved by the said order, the petitioner herein filed a revision under Section 373(i) Cr.P.C before the learned I-Additional Sessions Judge (PCR Court), Thanjavur. The Additional Sessions Judge confirmed the order passed by the Lower Court. Aggrieved by the concurrent findings rendered by the Courts below, the present Criminal Original Petition has been filed by the petitioner invoking the inherent jurisdiction under



Section 482 of Cr.P.C.

3. The learned counsel appearing for the petitioner would submit that he did not dispute the marriage solemnized between the petitioner and the respondent/wife. However, he urged only one point before this Court that since the petitioner is an agricultural coolie, he is not able to pay the amount of Rs.3,000/- as awarded by the Court below as maintenance to the respondent wife. Hence, he prayed this Court to reduce the amount from Rs.3,000/- to a reasonable amount as may be deemed fit and proper.

4. On factual aspects, the learned Magistrate after examining the entire matter in detail, awarded maintenance under Section 125 Cr.P.C to the respondent, which is not in dispute. However the learned counsel appearing for the petitioner made his submission only to reduce the maintenance amount from Rs.3,000/- to a reasonable amount. However, the issue before this Court is whether this Court can invoke its inherent jurisdiction under Section 482 Cr.P.C or not.

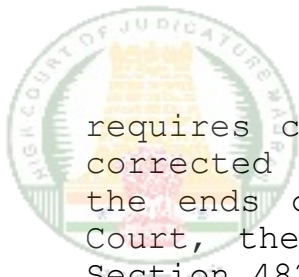
5. The learned counsel for the petitioner submitted that though second revision before the High Court is not maintainable and barred after dismissal of first one by the Court of Sessions as contemplated under Section 397(3) Cr.P.C., the inherent power available to the High Court under Section 482 Cr.P.C cannot be curtailed. In support of his submission, the learned counsel for the petitioner relied upon the decisions of the Hon'ble Apex Court reported in (1999) 4 SCC 241 (Krishnan and another vs. Krishnaveni).

6. The learned counsel appearing for the respondent submitted that the maintenance amount claimed by the respondent/wife before the lower Court is only Rs.3,000/-. Considering the present situation, the lower Court awarded a sum of Rs.3,000/- to the respondent/wife as maintenance and the same was confirmed by the lower appellate Court. Therefore, there is no illegality or infirmity in the order passed by the Courts below.

7. I have heard learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

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

9. Though, the above decision, it has been held that the second revision is not maintainable under Section 397(3) Cr.P.C, the inherent power of this Court under Section 482 Cr.P.C can still be invoked. Under the said Section, if the High Court on examination of the record, finds that there is grave miscarriage of justice or abuse of process of the courts or that the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the learned Magistrate



requires correction, it is the duty of the High Court to have it corrected to render substantial justice. It is, therefore, to meet the ends of justice and to prevent abuse of the process, of the Court, the High Court is conferred with such inherent power under Section 482 Cr.PC.

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10. However, on perusal of the entire orders passed by the Court below, this Court finds that there is no illegality or infirmity in the order passed by the Courts below and the maintenance amount claimed by the respondent/ wife before the lower Court is only Rs.3,000/-. Considering the present situation, the lower Court awarded a sum of Rs.3,000/- to the respondent/ wife as maintenance and the same was confirmed by the lower appellate Court.

11. In view of the above, it is not a fit case to invoke the inherent power of this Court under Section 482 Cr.P.C., warranting interference in the orders passed by the Courts below.

12. Accordingly, this Criminal Original Petition is dismissed and the order dated 20.01.2010 passed by the learned I-Additional Sessions Judge (PCR Court), Thanjavur in Cr.R.P.No.31 of 2009 is confirmed. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(RECORD)

/True Copy/

Sub Assistant Registrar

To

1.The First Additional Sessions Judge (PCR Court),
Thanjavur.

2.The Judicial Magistrate No.I, Thanjavur.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M.KARUNANITHI Advocate in SR. No. 86206

+1cc to Mr.D.SHANMUGARAJA SETHUPATHI Advocate in SR. No. 86414

KMI/IS

JS/JC/SAR.4/28.11.2017/3P-6C

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