

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2018

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.27424 of 2011
and
CRL.MP.Nos.1 and 2 of 2011

S.Dhanasekaran

... Petitioner

Vs.

D.Umagandhi

... Respondent

PRAYER: This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records of the District and Sessions Court (Fast Track Court No.3) Virudhachalam in Crl.R.C.No18/2011 dated 30.06.2011, confirming the judgement of the learned Judicial Magistrate cum District Munsif, Neyveli in M.C.No.23/2007, dated 25.10.2010 and to set-aside the same.

For Petitioner : Mr.C.Sivakumar

For Respondent : No appearance

O R D E R

This Criminal Original Petition has been filed, by the revision petitioner/husband to set aside the order passed by the learned Additional District and Sessions Judge, Virudhachalam in Crl.R.C.No18 of 2011, dated 30.06.2011, confirming the order passed by the learned District Munsif cum Judicial Magistrate, Neyveli in M.C.No.23 of 2007, dated 25.10.2010.

2. Mr.M.Kempraj, learned counsel for the respondent has made an endorsement stating that he is reporting no instructions. Hence, after hearing Mr.C.Sivakumar, learned counsel for the petitioner and perusing the records, order is being passed.

3.The learned counsel for the petitioner has submitted that the respondent herein has filed M.C.No.23 of 2007 on the file of the District Munsif cum Judicial Magistrate, Neyveli, under Section 125 Cr.P.C., seeking maintenance for herself and her children and the learned District Munsif-cum-Judicial Magistrate

has directed the petitioner herein to pay a sum of Rs.2,000/-, as maintenance per month to the respondent herein, however, he has dismissed the said case against the respondent's children. He further submitted that challenging the said order, the petitioner herein has filed Crl.R.C.No.18 of 2011 on the file of the Additional District and Sessions Judge, Virudhachalam. The learned Additional District and Sessions Judge, Virudhachalam, by the order dated 30.06.2011, has dismissed the said revision, confirming the order passed by the learned District Munsif-cum-Judicial Magistrate, Neyveli. He further submitted that the respondent is living in adultery, and hence the petitioner herein has filed H.M.O.P No.37 of 2008 on the file of the Sub-Judge Neyveli, seeking divorce on the grounds of cruelty and adultery and the learned Sub-Judge, by the order dated 13.03.2014, has allowed the said petition and granted divorce and as against the same, the respondent herein has not filed any appeal.

4. He further submitted that the respondent herein is living in adultery with one Velmayil and they gave letters admitting their relationship. He further submitted that in order to prove that the respondent is living in adultery, an opportunity may be given to the petitioner to produce the aforesaid letters and order passed in HMOP.No.37 of 2008. Hence, he requests to remand the matter to enable the petitioner to adduce additional evidence.

5. Taking into consideration, the learned Sub-Judge has granted divorce in H.M.O.P.No.37 of 2008 on the ground of cruelty and adultery and also the contention of the learned counsel for the petitioner that the respondent and one Velmayil gave letters admitting the adultery, this Court is of the view that an opportunity should be given to the petitioner to adduce additional evidence.

6. In the result, this petition is allowed. The order passed by the learned Additional District and Sessions Judge, Virudhachalam in Crl.R.C. No.18 of 2011, dated 30.06.2011 and the order passed by the learned District-Munsif-cum-Judicial Magistrate, Neyveli in M.C.No.23 of 2007 dated 25.10.2010 are set aside and the matter is remitted back to the learned District Munsif-cum-Judicial Magistrate, Neyveli for fresh disposal.

7. The learned District Munsif-cum-Judicial Magistrate, Neyveli, is directed to restore M.C.No.23 of 2007 on his file and give an opportunity to the petitioner herein to adduce additional evidence, with regard to the orders passed in H.M.O.P.No.37 of 2008 on the file of the learned Sub Judge, Neyveli and also in respect of the letters said to have been

given by the respondent and one Velumayil. The learned District Munsif cum Judicial Magistrate is further directed to give an opportunity to the respondent to adduce rebuttal evidence with regard to the aforesaid documents and dispose of the M.C.No.23 of 2007, on merits in accordance with law. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rst/stm

To

1. The District and Sessions Court
(Fast Track Court No.3),
Virudhachalam.
2. The Subordinate Judge, Neyveli.
3. The Judicial Magistrate-cum-District Munsif,
Neyveli.

+1 cc to M/s.C.Sivakumar, Advocate Sr.No.68605
+1 cc to M/s.M.Kempuraj, Advocate Sr.No.68920

CP (CO)
CSL/26.11.2018

Crl.O.P.No.27424 of 2011

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