

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No. 5558 of 2017

and

Crl. M.P. Nos. 4160/2017 and 6623/2018

P. Umamaheswari ... Petitioner

Vs.

1. Azhagu Duraisamy
2. Banumathi
3. Babu

... Respondents

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for records relating to the orders passed in Criminal Revision No.2 of 2015 dated 2.2.2016 on the file of the Principal District Judge, Perambalur, confirming the order in M.C. no.41/2010 dated 6.3.2015 on the file of the learned Chief Judicial Magistrate, Perambalur and thereby set aside the orders.

For Petitioner : Mr. N. Suresh

For Respondents : Mr. C. Ramkumar

ORDER

The relief sought for in this petition is to set aside the orders passed in Criminal Revision No.2 of 2015 dated 2.2.2016 on the file of the Principal District Judge, Perambalur, confirming the order in M.C. no.41/2010 dated 6.3.2015 on the file of the learned Chief Judicial Magistrate, Perambalur

2. Azhagu Duraisamy and Banumathi were left in the lurch by their two children, Uma Maheswari and Babu. The distraught parents filed M.C. No. 41/2010 before the Chief Judicial Magistrate, Perambalur, under Section 125 CrPC claiming maintenance from their children Uma Maheswari and Babu. Uma and Babu entered appearance and strongly contested the case before the Chief Judicial Magistrate. On behalf of the parents, 4 witnesses were examined and 2 documents were marked. On behalf of the children, 4 witnesses were examined and 19 documents were marked. After considering the evidence

adduced by both sides, the Chief Judicial Magistrate by order dated 06.03.2015 in M.C. No. 41 of 2010 directed Uma Maheswari and Babu to pay Rs.3000/- to each of their parents [Rs.6000/- totally]. Challenging the order, Uma Maheswari alone filed Crl. Revision No. 2/2015 before the Principal District Judge, Perambalur. The Principal District Judge by order dated 02.02.2016 has dismissed the revision petition, thereby confirming the order passed by the Chief Judicial Magistrate, Perambalur. Challenging the orders passed by the courts below, Uma Maheswari has filed the present petition under Section 482 CrPC.

3. Heard Mr. N. Suresh, the learned counsel appearing for Uma Maheswari, who submits that she is not liable to pay any maintenance to her parents because the entire proceedings has been carried out at the instigation of her brother Babu. He also submitted that a partition suit was filed, in which an interim order, not to alienate was passed, despite which her parents have sold certain properties in the year 2010 and thereafter they have filed M.C. No. 41 of 2010.

4. Per contra, Mr.C. Ramkumar, learned counsel appearing for the parents refuted the contentions.

5. This Court gave its anxious attention to the rival submissions. At the outset, this petition is not maintainable, in view of the bar under Section 397 (3) CrPC in as much as Uma Maheswari has invoked the revisional jurisdiction of the Sessions Court and therefore she is precluded from filing a second revision petition before this Court. Further, a petition under Section 482 CrPC is maintainable only if it is shown that there is a jurisdictional error leading to miscarriage of justice in the orders passed by the courts below. In this case, the Chief Judicial Magistrate and the Sessions Court have the jurisdiction to entertain the petitions under Section 125 CrPC and the revision under Section 397 (1) CrPC, respectively. Both the courts have gone into the evidence adduced by the parties and have held that the parents have been deserted by the children. Both the courts have also gone into the financial capability of the children to pay maintenance and only thereafter the amount has been quantified as Rs.3000/- per month per parent.

6. This Court finds no perversity in the order passed by the court below warranting interference in exercise of the inherent powers under Section 482 CrPC. Above all, it is the duty of the children to take care of their parents especially when they are old and infirm. It is seen that the father is 73 years old and the mother is 68 years old. Further, the sum of Rs.6000/- is too small an amount in the prevailing cost of living. We do not know how long the parents may live.

7. In the result, this petition is dismissed. The parents will be entitled to withdraw whatever amount that has been deposited before the trial court. Consequently, the connected Miscellaneous Petitions are closed.

-sd/-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Principal District Judge,
Perambalur.

2 The Chief Judicial Magistrate,
Perambalur.

3. The Public Prosecutor,
Madras High Court, Chennai.

+lcc to Mr.N.SURESH Advocate, S.R.No. 31543(20/08/2018)

CrI.O.P.No. 5558 of 2017
and

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and 6623/2018

KAN (CO)

VS 16.05.2018

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