

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.20471 of 2018
AND CRL.M.P.Nos.11000 & 11001 of 2018

S.N.Harish Babu

.. Petitioner

Vs

Varsha Sarda

.. Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records with regard to Crl.M.P.SR.No.6340 of 2018 in M.C.No.37 of 2017 on the file of Judicial Magistrate Court, Tambaram and set aside the same.

For Petitioner : Mr.B.R.Ramesh Babu

O R D E R

Harish Babu got married to Varsha on 30.11.2012 and the couple have one daughter. On account of matrimonial discord, the spouses get estranged and there are matrimonial proceedings pending between them in various Courts. Suffice it to say that Varsha has initiated M.C. No.37 of 2017 under Section 125 Cr.P.C. before the Judicial Magistrate, Tambaram, claiming maintenance for herself and her daughter. During the course of trial, Harish Babu filed Crl.M.P. for a direction to dismiss M.C.No.37 of 2017 without trial as not maintainable. The said petition was not numbered, but was assigned S.R.No.6340 of 2018. The learned Magistrate heard the counsel for Harish Babu in S.R.No.6340 of 2018 and dismissed the same on 26.07.2018. Aggrieved by which, Harish Babu is before this Court.

2.Mr.Ramesh Babu, learned counsel for Harish Babu contended that the very petition filed by Varsha before the Judicial Magistrate, Tambaram is not maintainable and should have to be rejected in limine.

3.Unlike the Code of Civil Procedure, where the Court has got power to strike off the pleadings or reject the plaint,

there is no such power in the Code of Criminal Procedure to dismiss a petition for maintenance in limine without enquiry.

4.The matrimonial relationship is admitted by both sides. Under such circumstances, a duty is cast upon the trial Court to conduct an enquiry to find out if the husband has deserted the wife and thereafter, give a finding about the quantum of maintenance payable. In such view of the matter, the order passed by the Judicial Magistrate, Tambaram dated 26.07.2018 cannot be said to be illegal warranting inference and this petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

pns/gya

To

Judicial Magistrate Court,
Tambaram.

+lcc to Mr.B.R.Ramesh Babu, Advocate Sr.57826

सत्यमेव जयते

CRL.OP.No.20471 of 2018

srg 4/9/2018

WEB COPY