

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2018

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

CrI.O.P.No.10504 of 2018

and

CrI.MP.No.5383 of 2018

N.Krishnaraj Petitioner/Petitioner

vs.

1. Subathra
2. Minor Anusri
Minor Guardian Mother
Subathra Respondents/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the entire records relating to the order passed in CrI.RC.No.19 of 2015 on the file of the Principal District and Sessions Judge, Tiruppur confirming the order passed in MC.No.5 of 2010 on the file of the Judicial Magistrate, Palladam, Tiruppur District and set aside the same.

For petitioner : Mr.C.Prakasam

O R D E R

This Criminal Original Petition has been filed to call for the entire records relating to the order passed in CrI.RC.No.19 of 2015 on the file of the Principal District and Sessions Judge, Tiruppur, confirming the order passed in MC.No.5 of 2010 on the file of the Judicial Magistrate, Palladam, Tiruppur District and set aside the same.

2. For the sake of convenience, the parties are referred to by their name.

Subathra married Krishnaraj on 13.06.2008 and they have a minor daughter by name Anusri. Their marriage ran into rough weather resulting in the couple getting estranged. Subathra initiated proceedings under Section 125 Cr.P.C in MC.No.5 of 2010 before the Judicial Magistrate, Palladam. On behalf of Subathra, three witnesses were examined and eight documents were marked. On behalf of Krishnaraj, one witness was examined and

no documents were marked. After considering the evidence adduced by both sides, the trial Court by order dated 30.03.2015 awarded maintenance of Rs.4,000/- per month to Subathra and Rs.3,000/- per month to the minor child Anusri (totally Rs.7,000/- per month). Challenging the said order, Krishnaraj filed Crl.RC.No.19 of 2015 before the Additional District and Sessions Judge No.2, Tiruppur, under Section 397 Cr.P.C.

3. The learned Additional District and Sessions Judge No.2, Tiruppur, heard Crl.RC.No.19 of 2015 and dismissed the same, by confirming the order passed by the trial Court. Challenging the orders passed by the Courts below, Krishnaraj is before this Court invoking jurisdiction under Section 482 Cr.P.C.

4. Mr.C.Prakasam, learned counsel for the petitioner submitted that a petition under Section 482 Cr.P.C, challenging the orders passed by the Courts below is maintainable.

5. It is seen that under Section 397 (3) Cr.P.C, if a person is invoking revisional jurisdiction of the Sessions Court, he is precluded from filing a second revision before the High Court. Thus, what has been prohibited cannot be permitted, vide a petition under Section 482 Cr.P.C. However, in extraordinary cases, where it is shown that there has been a gross illegality committed by the Courts below in violation of certain legal provisions, inherent power of the High Court under Section 482 Cr.P.C is available to set right the illegality. In this case, the Magistrate has the jurisdiction to deal with the application filed under Section 125 Cr.P.C. Similarly, the Sessions Court also has the jurisdiction to entertain the revisional application filed under Section 397 Cr.P.C. Thus, there is no illegality committed by the Courts below in entertaining the applications and passing orders on merits.

6. As regards the factual submissions about incapability of Krishnaraj to make the payment, this Court cannot go into the same under Section 482 Cr.P.C as the facts have already been settled by the Courts below. Hence, this petition is dismissed. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mk/lok

To

1. The Principal District and Sessions Judge,
Tiruppur

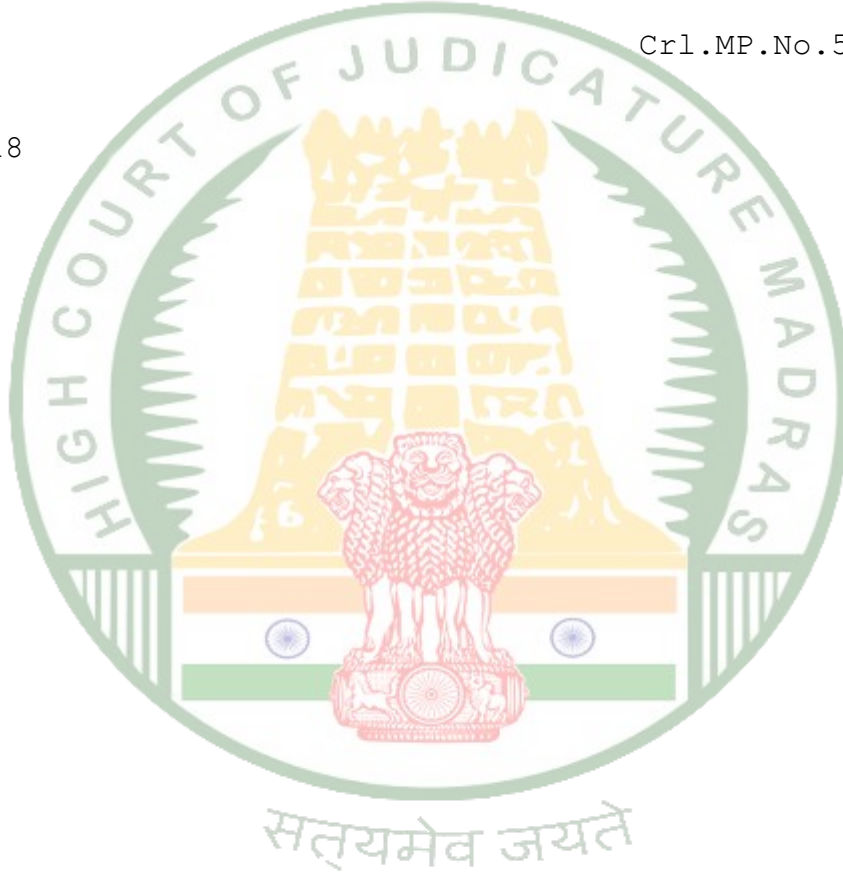
2. The Judicial Magistrate, Palladam,
Tiruppur District

+1cc to Mr.C.Prakasam, Advocate in sr.no.25115

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and

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KJ(CO)
CS/24/04/18



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