

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.02.2018

DELIVERED ON : 27.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.R.C.No.273 of 2016

and

Crl.M.P.No.1890 of 2016

Jeethendrakumar .. Petitioner

Vs

1.T.J.Kalaiarasi

2.Minor Piragadeeswaran

(Represented by mother and
natural guardian)

.. Respondents

Prayer: Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code, to set aside the order passed by the learned Judicial Magistrate, Thiruvotriyur in M.C.No.11 of 2013 dated 18.11.2015.

For Petitioner : Mr.V.Vargees Amal Raja

For Respondents : Mr.G.A.Thiyagarajan

JUDGMENT

This Criminal Revision is filed against the order passed by the learned Judicial Magistrate Thiruvotriyur in M.C.No.11 of 2013 dated 18.11.2015.

Brief case of the Revision Petitioner:

2.The petitioner was married to the respondent on 5.6.2011 as per the Hindu rights and customs. Through the matrimonial life, a male child was born on 05.06.2012. The respondent deserted the petitioner after her Valaikappu ceremony taking all her articles to her parent's home. All effects made by the petitioner ended in vain and the respondent refused to return to her matrimonial home and she never allowed the respondent to see

the children. The petitioner also filed HMOP in No.106 of 2013 before the Subordinate Judge at Ponneri for dissolution of marriage. The respondent preferred complaint before the All Women Police Station Thiruvottiyur on 11.10.2012 for not maintaining her and children. Hence the respondent filed maintenance case in MC 11 of 2013 to pay monthly maintenance of Rs.10,000/- per month to the respondents.

Brief case of the respondent:

3.The case of the respondents is that at the time of marriage, her parents spent more than 5 Lakh towards marriage expenses, 15 Sovereign of gold and other Seer and other articles were given as dowry. The petitioner is working as Data Entry Operator in Joint Commissioner of Police North Town, Chennai and receiving more than a sum of Rs.20,000/- p.m. towards salary. Further the petitioner is having illegal and illicit intimacy with the typist working in the office of the petitioner. In spite of all efforts, the petitioner never changed his attitude and continued his illegal intimacy. Having no other go, the respondent left the matrimonial home and initiated police complaint for reunion. The respondents were struggling for their day to day essential needs and filed the maintenance case.

4.The Learned trial Judge after appreciation of the evidences adduced by both parties directed the petitioner to pay a sum of Rs.4,500/- to the 1st respondent and the sum of Rs.2500/- to the 2nd respondent and in total a sum of Rs.7,000/- is ordered as monthly maintenance from the date of filing of the maintenance petition.

Rival Submissions

5.The Learned Counsel for the revision petitioner contends that the learned Judicial Magistrate failed to appreciate the fact that the 1st respondent is earning more than the petitioner and running a chicken centre namely Kalai chicken centre.

6.The Learned Counsel for the revision petitioner submits that the petitioner purchased the property in the name of the 1st respondent borrowing huge money from third parties and now repaying the same with great difficulties and taking care of his aged mother.

7.The Learned Counsel for the respondents submits that the revision petitioner is protracting the case by filing this revision and supported the view taken by the lower Court.

8.I have heard Mr.V.Vargees Amal Raja, learned counsel for the petitioner and Mr.G.A.Thiyagarajan, learned counsel for the respondents and perused the entire materials available on record.

9.Since controversy raised through present revision is only regarding the amount of the interim maintenance, there was no contention or controversy on the question of respondent living separately from her matrimonial home for a just and sufficient cause. Even otherwise when petitioners own case is that he has moved divorce against respondent, her entitlement to maintenance is not to be defeated.

10.The question in my view should be viewed in a broader perspective that it is the first and the highest duty of the Court to take care that an act of the Court should not prejudice the rights of any party or cause any injury to a party. The principle has aptly been described by the maxim "Actus curiae neminem gravabit" (an act of the Court shall prejudice no man). Such a principle is founded upon justice and good sense and affords a safe and certain guide for the administration of the law. The Court by its laches or mistake cannot take away the right of a party or cause an injury to the party so as to leave it without interest or remedy. This principle was accepted by the Judicial Committee of the Privy Council in *Jai Berham vs. Kedar Nath Marwari* reported in AIR 1922 PC 269 and it was observed in that case that it was inherent in the general jurisdiction of the Court to act rightly and, fairly according to, the circumstances towards all parties involved. Their Lordships of the Privy Council quoted with approval the following observations of Grains, L.C. In *Rodger v. Comptoir de Escopte de Paris* (1871) 3 PC 465: 17 ER 120.

"One of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors and when the expression 'the act of the Court' is used, it does not mean merely the act of the primary Court, or of any intermediate Court of Appeal, but the act of the Court as a whole from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case."

11.The same principle was reiterated by their Lordships of the Hon'ble Supreme Court in *Jang Singh v. Brij Lal* reported in AIR 1966 SC 1631 wherein Hidayatullah, J., as he then was observed as under (at p. 1633):

"There is no higher principle for the guidance of the

Court than the one that no act of Courts should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. This is simply summed up in the maxim: "Actus curiae neminem gravabit."

12. Thus, it is well settled that the Court by its action or inaction, deliberate or mistaken, cannot take away the right of a party or take away a remedy which was otherwise available to the litigant, it would certainly cause injury to one of the suitors for no fault of his and such an illegal action on the part of the Court must be held to be without jurisdiction. The Court has jurisdiction to decide the matters before it according to law, but not in violation of law or to defeat the rights of a party by its action or inaction. In such circumstances this Court is bound to interfere in the revisional jurisdiction.

13. The Learned trial Judge elaborately discuss the evidence adduced by both parties and directed to pay Rs.4,500/- to the 1st respondent and Rs.2,500/- to the 2nd respondent. On perusal of the cross examination of the respondent, she admitted that she is running a chicken centre and also tuition centre.

14. On considering the submission of both parties, the impugned order dated 18.11.2015 in this case is modified whereby the petitioner husband will pay monthly maintenance of Rs.4,000/- per month to 1st respondent namely Kalaiarasi and Rs.2,000/- to minor Pragatheeswaran from the date of the maintenance case and will continue to pay this amount till disposal of the maintenance case wherein this interim maintenance shall merge in the final interim maintenance case order. This criminal revision stands disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Judicial Magistrate,
Thiruvotriyur.

+1cc to Mr.V.Vargees Amal Raja, Advocate sr.no.80797

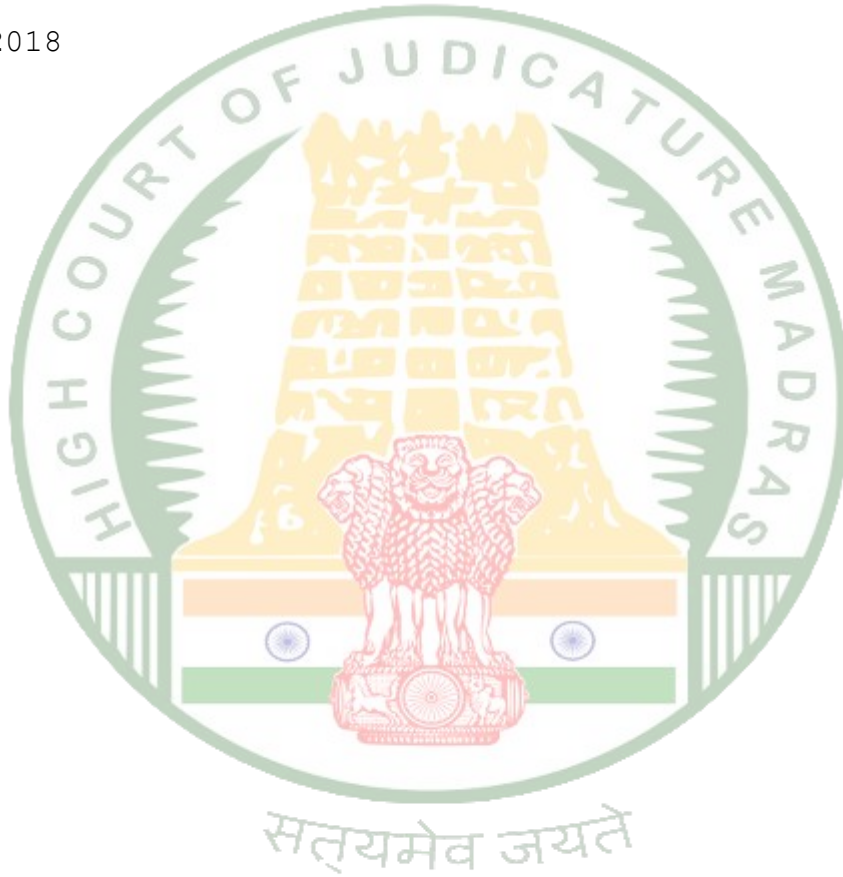
+2cc to Mr.G.A.Thiyagarajan, Advocate sr.no.80628

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