

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2018

CORAM :

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.21163 of 2018 and
CRL.M.P.Nos.11486 & 11487 of 2018

Mohamed Sirajudin

... Petitioner

Vs

1.Thoulath Nisha @ Ponnachi
2.Ashima Bhanu
3.Afrin Bhanu

... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records and set aside the order passed in Crl.R.P.No.06 of 2017 on the file of Additional District and Sessions (Mahila Fast Track) Court, Thiruvavarur, against M.C.No.06 of 2014 on the file of the District Munsif cum Judicial Magistrate Court, Nannilam.

For Petitioner : Mr.K.P.Anantha Krishna

O R D E R

This petition has been filed to call for the records and set aside the order dated 11.07.2018, passed in Crl.R.P.No.6 of 2017 on the file of the Additional District and Sessions (Mahila Fast Track) Court, Thiruvavarur, filed against the order passed in M.C.No.6 of 2014 on the file of the District Munsif-cum-Judicial Magistrate Court, Nannilam.

2. The petitioner/husband got married to the first respondent/wife on 03.04.2002 and they have two daughters (R2 and R3) through the wedlock. On account of matrimonial discord, the couple got estranged. The first respondent/wife filed M.C.No.6 of 2014 under Section 125 Cr.P.C before the District Munsif-cum-Judicial Magistrate, Nannilam, against the petitioner/husband seeking maintenance. Before the trial Court, two witnesses were examined on behalf of the 1st respondent/wife and eight documents were marked. On behalf of the petitioner/husband, three witnesses were examined. After considering the evidence adduced by both sides, the trial Court, by order dated 03.01.2017, awarded maintenance at Rs.5,000/- per

month for wife and Rs.8,000/- per month for each child, i.e. Rs.16,000/- for two children, totally Rs.21,000/-, payable from the date of filing of the petition, viz. 28.03.2014.

3. Challenging the said order, the petitioner/husband filed a Revision Petition under Section 397 Cr.P.C. in Crl.R.P.No.6 of 2017 before the Sessions Court, Thiruvavarur which has heard by the Additional Sessions Judge, (Mahila Fast Track Court), Thiruvavarur. The Mahila Judge rendered a finding that the husband has deserted his wife and children, however, reduced the maintenance payable substantially. According to the revisional Court's order, the husband should pay Rs.2,500/- from 01.04.2014 to 31.12.2015; Rs.3,000/- from 01.01.2016 to 31.12.2017; Rs.4,000/- from 01.01.2018 to 31.12.2018; from 01.01.2019, Rs.5,000/- for each child, till they attain the age of 18 and Rs.5,000/- for the wife, until she gets remarried or gets employment. Challenging the said order, the husband/petitioner is before this Court.

4. Heard the learned counsel for the petitioner/husband who submitted that the petitioner is having a petty shop and he does not have any means to make the payment. He also submitted that there is every possibility for the parties to arrive at a compromise.

5. Be that as it may, it is seen that the petitioner/husband has invoked revisional jurisdiction of the Sessions Court. Once the revisional jurisdiction of the Sessions Court is invoked, a second revision in the High Court is not maintainable, in view of the bar under Section 397(3) Cr.P.C.. However, a petition under Section 482 Cr.P.C. is maintainable, if it is shown that the orders passed by the Courts below are beyond the jurisdiction or ex facie illegal.

6. In this case, the Magistrate has the jurisdiction to entertain a petition under Section 125 Cr.P.C. Similarly, the Sessions Court also has the jurisdiction to entertain a Revision Petition under Section 397 Cr.P.C. Both the Courts have appreciated the evidence adduced by the parties and have held that the petitioner/husband has deserted his wife and children. However, the Sessions Court has considerably modified the monthly maintenance that was awarded by the trial Court. Hence, this Court does not find any perversity or illegality in the order passed by the Courts below, warranting interference.

In the result, this petition is dismissed. Consequently,
connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

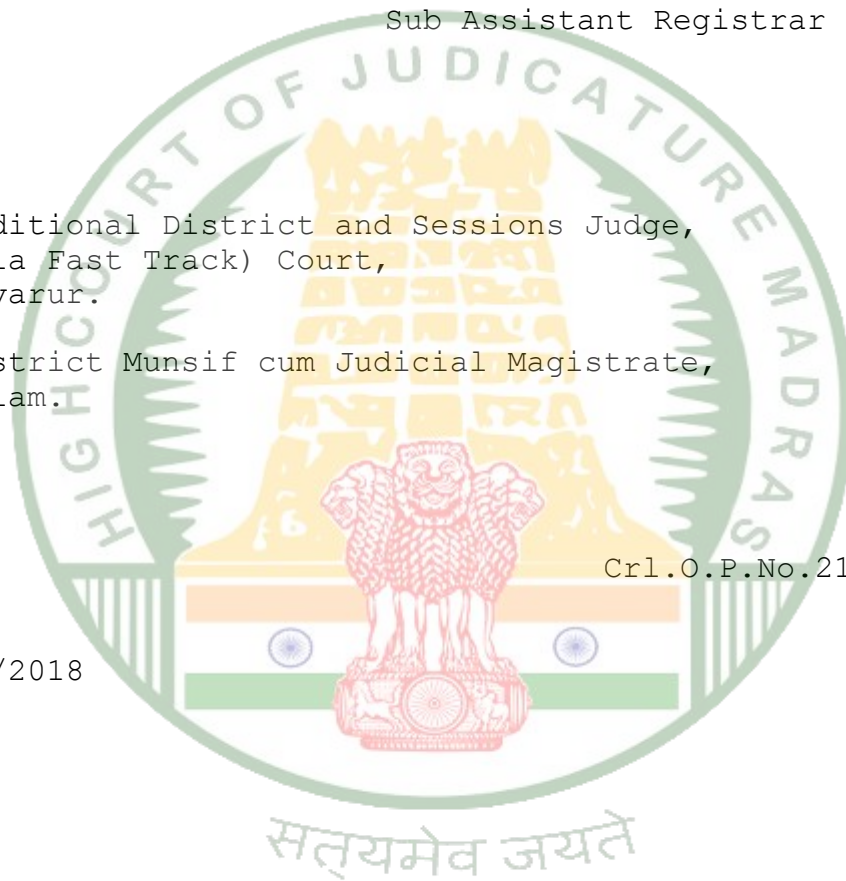
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To

1. The Additional District and Sessions Judge,
(Mahila Fast Track) Court,
Thiruvarur.
2. The District Munsif cum Judicial Magistrate,
Nannilam.

Crl.O.P.No.21163 of 2018

srg 24/09/2018



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