

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2018

CORAM

THE HONOURABLE MR.JUSTICE M.S. RAMESH

Crl.OP No.20861 of 2015
and
Crl.M.P.No.4210 of 2016
and
M.P.No.1 and 2 of 2015

D.Murugesan ...Petitioner

Vs.

1.M.Hemanalini
2.Minor.Swathi,
Represented by her mother and
Guardian, Mrs.Hemanalini. ...Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to M.C.No.14 of 2015 on the file of the Judicial Magistrate Court No.I, Kanchipuram, quash the same.

For Petitioner : Mr.S.Kumarsankar

For Respondents : Mrs.Vijayakumari Natarajan

ORDER

The prayer in the present petition is to call for the records relating to M.C.No.14 of 2015 on the file of the Judicial Magistrate Court No.I, Kanchipuram, quash the same.

2. The Maintenance Case in M.C.No.14 of 2015, on the file of the learned Judicial Magistrate No.I, Kanchipuram, is under challenge in the proceedings under Section 482 of Cr.P.C. This Court, while entertaining the quash petition had granted order of an interim stay on 19.08.2015 in M.P.No.1 of 2015 as well as the personal appearance of the husband was dispensed with on the same date by virtue of order passed in M.P.No.2 of 2015.

3. Today, when the matter is taken up, the learned counsel for the petitioner submitted that, inspite of the interim order

of stay of this Court, in M.C.No.14 of 2015 came to be finally disposed of on 29.09.2016. When a report was called for from the Lower Court, the learned Judicial Magistrate No.I, Kancheepuram, had clarified that the learned Judge had taken charge of the said post on 07.06.2016 and since, there was no appearance of the husband continuously and on realizing the pathetic plight of the wife, continuously appearing before the Court, had with bonafide intention and strong notion to serve justice, had passed an order setting that the respondent exparte.

4. The learned Judicial Magistrate had also expressed regret and apologies and has undertaken to exercise due care and caution in future. I am constrained to accept the explanation given by the learned Magistrate.

5. The learned counsel for the petitioner submitted that the proceedings in M.C.No.14 of 2015 is not maintainable, since the respondent herein, had already received Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) towards full and final settlement of maintenance on 21.02.2009 and therefore, in view of the receipt of lumpsum amount, she was not entitled to claim maintenance. Further, the learned counsel for the petitioner also submitted that in the petition to vacate stay filed before this Court, the first respondent herein had admitted that she had accepted a sum of Rs.1,50,000/- towards full and final settlement of maintenance and therefore, she is not entitled to claim maintenance again.

6. The learned counsel for the respondents, on the other hand submitted that the full and final settlement was received by the Advocate of the respondent alone and therefore, it cannot be construed that, it was received by the respondent wife. The learned counsel for the respondents further submitted that, even assuming that the first respondent had received a sum of Rs.1,50,000/- the same could be construed as full and final settlement for the wife alone and the minor child is entitled to seek maintenance.

7. I have considered the submissions made on both the parties.

8. In view of the fact that the first respondent has made a submission that the child was not part of full and final settlement of the amount received by the wife, this issue needs to be re-appraised. The other aspects i.e., whether Rs.1,50,000/- was towards full and final settlement of maintenance and that the first respondent herein is not entitled to seek maintenance again requires further evidence and therefore, it would be appropriate to direct the Trial Court to re-look into the matter, in the light of the submission made by

the counsel herein.

9. In the above circumstances, I am of the view that the matter can be remanded back to the Trial Court for fresh consideration. In the result, the order passed by the learned Judicial Magistrate No.I, Kanchipuram dated 29.09.2016 in M.C.No.14 of 2015 is set aside. Consequently, the Trial Court is directed to take up the proceedings in M.C.No.14 of 2015 on file and dispose of the same, after giving an opportunity to both parties. The Trial Court shall also endeavor to dispose of the maintenance case as expeditiously as possible.

10. At this juncture, the learned counsel for the petitioner/ husband represents that, he is employed in the Transport Department, Karur and therefore, seeks indulgence of this Court to dispense with his appearance. I am of the view that his presence may be required at the time of Trial and therefore, there shall be a direction to the learned Judicial Magistrate No.I, Kanchipuram, to dispense with the presence of the petitioner/husband on such hearings where his appearance may not be required.

11. Before parting with the case, it would be appropriate to observe that, whenever, the Trial Court proceedings are sought to be quashed before the High Court and an interim order is granted and which is brought to the notice of the Trial Court, the Presiding Officer shall endeavor to make a note of the interim orders in the docket orders of each and every hearing dates, preferably with a distinct ink, so as to identify the cases where interim orders are granted by any higher Court.

12. Accordingly, this Criminal Original Petition stands disposed of. Consequently, connected Miscellaneous Petitions are closed.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

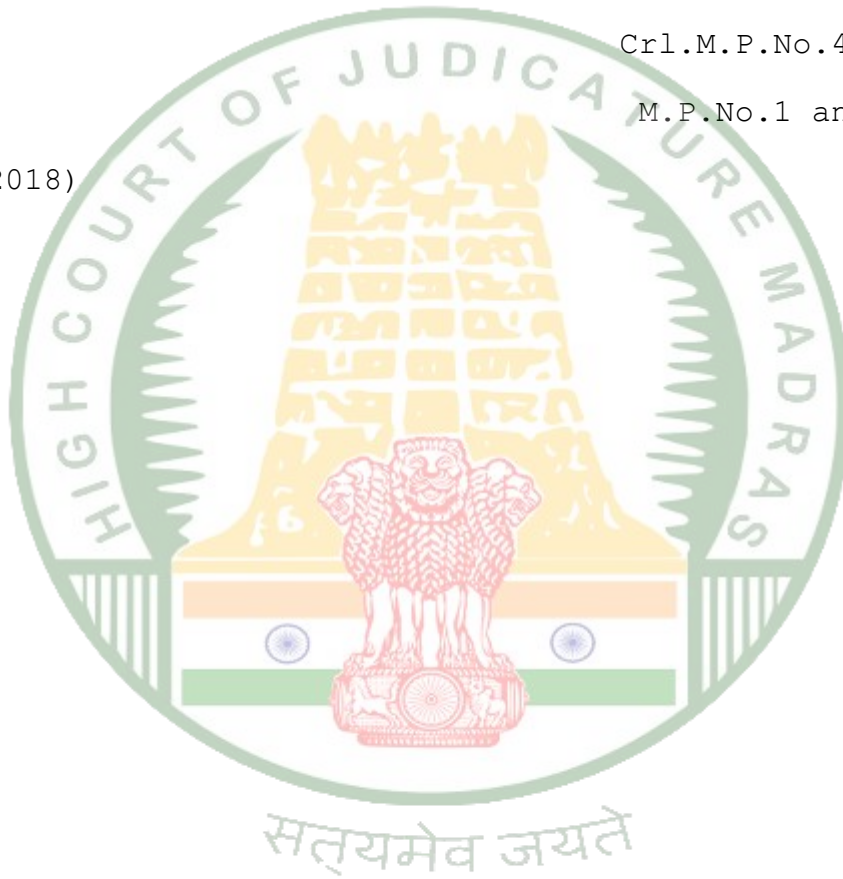
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To

The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.S. Kumarshankar, Advocate sr 18747.
+1 Cc to Mr. Natarajan, advocate sr 18701.

Cr1.OP No.20861 of 2015
and
Cr1.M.P.No.4210 of 2016
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SP(22/03/2018)



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