

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2018

CORAM:

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

CrI.O.P. No.11550 of 2018
and CrI.M.P.Nos.6026 and 6027 of 2018

M.Sivalingam ... Petitioner/Petitioner/Respondent

vs.

1.Rani
2.Minor Durga
rep. by her natural guardian
mother Rani ... Respondents/Respondents/Petitioners

Criminal Original Petition filed under Section 482, Cr.P.C. to set aside the order passed in M.C.No.9 of 2013 by the Judicial Magistrate, Ranipet, Vellore dated 13.07.2016 which was confirmed against the petitioner in Cr.R.P.No.24 of 2016 on the file of II Additional District Judge, Vellore at Ranipet dated 20.02.2018 and set aside the same.

For petitioner M.Sivalingam
Party-in-Person

For Respondents Mr.B.Sundara Pandiyan

ORDER

सत्यमेव जयते

This Criminal Original Petition has been filed to set aside the order passed in M.C.No.9 of 2013 by the Judicial Magistrate, Ranipet, Vellore dated 13.07.2016 which was confirmed against the petitioner vide order dated 20.02.2018 in Cr.R.P.No.24 of 2016 on the file of II Additional District Judge, Vellore at Ranipet and set aside the same.

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

3. Rani filed M.C.No.9 of 2013 before the Judicial Magistrate, Ranipet under Section 125 Cr.P.C. against Sivalingam seeking maintenance on the ground that Sivalingam had failed and neglected to maintain her and Durga, the child born to her through Sivalingam. On notice, Sivalingam entered appearance and contested the case. On behalf of Rani, one witness was examined and four documents were marked. Sivalingam examined himself as R.W.1 and marked six documents. After considering the evidence on record, the trial Court, by order dated 13.07.2016, in M.C.No.9 of 2013, awarded maintenance of Rs.5,000/- each per month to Rani and Durga and aggrieved by the said order, Sivalingam filed Cr.R.P.No.24 of 2016 before the Sessions Court, Vellore, which was heard by the II Additional District and Sessions Judge, Vellore. After hearing either side, the Sessions Judge, by order dated 20.02.2018, dismissed the revision application, upholding the order passed by the trial Court awarding maintenance of Rs.5,000/- each per month. Challenging the orders passed by the Courts below, Sivalingam has filed the present petition under Section 482 Cr.P.C.

4. Today, Sivalingam, is present along with his daughter Buvana. Mr.Sundarapandian, learned counsel, has entered appearance for Rani.

5. It is seen that against the order passed by the Magistrate, Sivalingam has approached the Sessions Court invoking its revisional jurisdiction under Section 397 Cr.P.C. in Cr.R.P. No.24 of 2016. Therefore, a second revision before the High Court is barred by 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 without jurisdiction or so perverse and opposed to law.

6. In this case, the trial Court has considered the evidence adduced by both the parties and has given the finding that Durga was born to Rani through Sivalingam and that Sivalingam had neglected to maintain them. On facts, the Sessions Court has considered the evidence and has agreed with the findings of the trial Court. Hence, this Court does not find any illegality, infirmity or perversity in the orders passed by the Courts below warranting interference.

7. Bhuvana, the daughter of Sivalingam submitted that she is the daughter of the latter, born through his first marriage with Prema. She further submitted that Rani is not the wife of Sivalingam and that she was a domestic helper. These aspects have been gone into both by the trial Court and the revisional Court in detail. This Court cannot re-appreciate the evidence under Section 482 Cr.P.C. Bhuvana submitted that her father

Sivalingam has suffered hemorrhage, on account of which, he is unable to speak and that he is aged about 77 years.

8. Coming to the quantum of maintenance, Sivalingam, in his counter statement filed before the trial Court, has admitted that he is receiving family pension of Rs.10,000/- from his employer and is also receiving Rs.9,000/- as family pension, since his deceased wife Prema was a Government teacher. He has also admitted that he has been receiving rents of Rs.40,000/- from various tenants.

9. Taking into consideration Sivalingam's present physical condition, this Court is of the view that interests of justice will be served if the maintenance amount of Rs.10,000/- per month is reduced to Rs.8,000/- per month payable from the date of this order and not retrospectively.

10. In fine, this petition is partly allowed and the maintenance amount is reduced from Rs.5,000/- each per month to Rs.4,000/- each per month (Total Rs.8,000/- per month) payable from the date of this order. As regards the arrears, it shall be paid in terms of the order of the trial Court. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gms
To

1.Judicial Magistrate,
Ranipet,
Vellore.

2.The II Additional District Judge,
Vellore at Ranipet.

3.The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.B.Sundara Pandiyan, Advocate Sr.42865

Cr1.O.P. No.11550 of 2018

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