

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.14895 of 2018

AND

Crl.MP.No.7510 of 2018

S.Deenadayalan

... Petitioner

Vs

Ammu alias Uma Maheshwari

... Respondent

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order of dismissal in Crl.R.C.No.20/2013 dated 13.06.2014 passed by the Learned II Additional District and Sessions Judge, Ranipet at Vellore confirm the Judgment in M.C.No.1/2011 dated 19.03.2013 passed by the Learned Judicial Magistrate at Arakkonam and consequently thereby allow this Criminal Original Petition.

For Petitioner : Mr.B.Sundarapandiyam

ORDER

This petition has been filed to set aside the order of dismissal in Crl.R.C.No.20/2013 dated 13.06.2014 passed by the Learned II Additional District and Sessions Judge, Ranipet at Vellore confirming the Judgment in M.C.No.1/2011 dated 19.03.2013 passed by the Learned Judicial Magistrate, Arakkonam.

2.For the sake of convenience, the parties will be referred to by their name. Uma Maheshwari got married to Deenadayalan on 24.10.2005 and Uma Maheshwari has two children. According to Deenadayalan, he is disputing the paternity of the second child. However, he has admitted the paternity of the first child. On account of matrimonial discord, the spouses got estranged, resulting in Uma Maheshwari filing M.C.No.1/2011 before the learned Judicial Magistrate, Arakkonam under section 125 of Cr.P.C claiming monthly maintenance for herself and children. Deenadayalan entered appearance and contested the case. On behalf of Uma Maheshwari, one witness was examined and five documents were marked. On behalf of Deenadayalan, one witness are examined and no document was marked. After considering the evidence adduced by both sides, the Trial Court, by order dated 19.03.2013 has directed Deenadayalan to pay a sum of Rs.4,000/- per month to Uma Maheshwari and two children. Aggrieved by the order, Deenadayalan filed Cr.R.P.No.20 of 2013 under section 397[1] of Cr.P.C., which has been dismissed by the II Additional District and Sessions Court, Vellore on 13.06.2014. Challenging which, this quash petition has been filed in the year 2018.

3.Heard Mr.B.Sunratapandiyan, learned counsel appearing for Deenadayalan, who submitted that Deenadayalan was arrested by the police, on the complaint lodged by Uma Maheshwari for an offence under section 498-A of IPC and that, he has lost his job. Therefore, he is not in a position to make payment.

4.These factual aspects cannot be gone into in a proceeding under section 482 of Cr.P.C. At the outset, challenging the order passed by the Magistrate, Deenadayalan invoked the revisional jurisdiction of the Sessions Court under section 397 of Cr.P.C by filing Cr.R.P.No.20 of 2013. Therefore, he is precluded under Section 397[3] of Cr.P.C. from filing a second revision application. However, a petition under Section 482 of Cr.P.C is maintainable, if it is shown that the two Courts below have committed an illegality warranting interference. In this case, on facts, both the Courts have found that Uma Maheshwari and her two children were deserted by Deenadayalan.

5.The Courts have also rejected the plea of Deenadayalan that the second child was not fathered by him. There is no jurisdictional error in the orders passed by the Courts below warranting interference. Admittedly, Deenadayalan has not paid any amount to Uma Maheshwari till date. In such view of the matter, this is not a fit case, the involve the jurisdiction of this Court, under Section 482 of Cr.P.C to be extended and this petition is devoid of merits and dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gmd/gya

To

1.The Learned Judicial Magistrate,
Arakkonam.

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

+1cc to M/s.B.Sundarapandiyan, Advocate Sr.No.35458

MP (CO)
GSP:19.6.2018

Cr1.O.P.No.14895 of 2018