

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2018

CORAM

THE HONOURABLE MR.JUSTICE P. RAJAMANICKAM

CRL.O.P.No.28648 of 2013
and
M.P.Nos.1 and 2 of 2013

1.Kayal Vizhi
2.Raman
3.Nathipriya

... Petitioners

Vs

Jothi Chettiar

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to M.C.No.2 of 2013 on the file of the Judicial Magistrate No.II, Panruti and quash the same.

For Petitioners : M/s. R. Meenal

For Respondent : Mr.S.K.Rakhunathan

O R D E R

This petition has been filed by the respondents in M.C.No. 2 of 2013 on the file of the Judicial Magistrate No.II, Panruti, to quash the proceedings in the aforesaid maintenance case.

2. The learned counsel for the petitioners has submitted that the respondent herein is the husband of the first petitioner and father of the petitioner Nos.2 and 3, has filed a petition under Section 125 Cr.P.C., seeking maintenance and the said petition has been taken on file in M.C.No.2 of 2013, on the file of the Judicial Magistrate No.II, Panruti. She further submitted that as per Section 125 Cr.P.C., wife can file a petition seeking maintenance against the husband, but no such right has been conferred to the husband seeking maintenance against wife. She further submitted that already partition took

place between the petitioners and the respondent and in the said partition, sufficient properties have been allotted to the share of the respondent and thereafter, he married second wife and he is living separately and through the second wife, he got three children and hence he is not at all entitled to file a petition under Section 125 Cr.P.C., seeking maintenance against the petitioner herein and hence she prayed to quash the proceedings in M.C.No.2 of 2013, on the file of the Judicial Magistrate No.II, Panruti.

3. The learned counsel for the respondent has submitted that as per Section 125(1)(d) of Cr.P.C., the petitioner being the father, is entitled to file a petition seeking maintenance against the petitioner Nos.2 and 3. He further submitted that the first petitioner has taken away all the immovable properties from the petitioner's house and hence, she is also liable to pay maintenance to the respondent and therefore, he prayed to dismiss the above petition.

4. As per Section 125 of Cr.P.C., wife can file a petition against her husband seeking maintenance, but such right was not given to the husband. Hence, so far as the first petitioner is concerned, the proceedings in M.C.No. 2 of 2013 on the file of the Judicial Magistrate No.II, Panruti, has to be quashed.

5. So far as the petitioner Nos.2 and 3 are concerned, they are the sons of the respondent herein. Under Section 125 Cr.P.C., father is entitled to file a petition seeking maintenance against sons. The question as to whether the respondent is having sufficient means to maintain himself has to be decided after taking evidence before the Trial Court. Therefore, the said question cannot be decided at this stage.

6. In the result, this petition is allowed so far as the first petitioner is concerned and consequently, the proceedings in M.C.No.2 of 2013 on the file of the Judicial Magistrate No.II, Panruti, is quashed against the first petitioner alone. So far as the petitioner Nos.2 and 3 are concerned, this petition is dismissed. Considering the representation made by the learned counsel for the petitioners that the petitioner Nos.2 and 3 are working at Chennai, their personal appearance before the Judicial Magistrate No.II, Panruti, is dispensed with. It is open to the Judicial Magistrate No.II, Panruti, to direct the petitioner Nos.2 and 3 herein to appear before him, whenever their presence is necessary. Considering the fact that the M.C.No.2 of 2013 is pending for the past five years, the concerned Judicial

Magistrate No.II, Panruti, is directed to dispose of the above case as early as possible, preferably within three months from the date of receipt of copy of this order. With the aforesaid observations, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition M.C.No.1 of 2013 is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vsa /gsi
To

1.The Judicial Magistrate No.II,
Panruti.

2.The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.R.Meenal, Advocate Sr.56240

+1cc to M/S.S.K.Rakhunathan, Advocate Sr.56024

CRL.O.P.No.28648 of 2013
and
M.P.Nos.1 and 2 of 2013

srg 12/09/2018

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