

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2018

CORAM:

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

Crl.O.P. No.25195 of 2018 & Crl.M.P. Nos.14252 and 14254 of 2018

K. Rajesh

... Petitioner

vs.

- 1 Alamelumangai @ Vanitha
- 2 Pavithra
- 3 Minor Jagadeshwar

..... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to set aside the order dated 24.07.2018 made in Crl.R.C. No.58 of 2017 on the file of the III Additional District and Sessions Court, Gobichettipalayam, confirming the order dated 12.04.2017 made in M.C. No.6 of 2011 on the file of the Judicial Magistrate Court No.I, Gobichettipalayam.

For petitioner Mr. A.V. Arun

ORDER

This Criminal Original Petition has been preferred seeking to set aside the order dated 24.07.2018 made in Crl.R.C. No.58 of 2017 on the file of the III Additional District and Sessions Court, Gobichettipalayam, confirming the order dated 12.04.2017 made in M.C. No.6 of 2011 on the file of the Judicial Magistrate Court No.I, Gobichettipalayam.

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

3 The brief facts leading to the filing of this Criminal Original Petition are as under:

3.1 Alamelumangai got married to Rajesh on 27.06.1994 and they have two children, viz., Pavithra and Jagdeshwar, through the wedlock. Their marriage ran into rough weather resulting in the spouses getting estranged. It is the case of Alamelumangai that she and her children were deserted by Rajesh and that he

did not provide any maintenance for them and therefore, she initiated proceedings in M.C. No.6 of 2011 before the Judicial Magistrate Court No.I, Gobichettipalayam under Section 125 Cr.P.C. against Rajesh.

3.2 On notice, Rajesh entered appearance and contested the case. On behalf of Alamelumangai, three witnesses were examined and seven documents were marked. On the side of Rajesh, neither any witness was examined nor any document marked.

3.3 The Trial Court, after considering the evidence adduced by the parties, by order dated 12.04.2017 in M.C. No.6 of 2011, directed Rajesh to pay monthly maintenance of Rs.4000/- each to the trio, from the date of filing of the petition till the life time of Alamelumangai, till Pavithra gets married and till Jagdishwar attains majority.

3.4 Challenging the said order, Rajesh filed Crl.R.C. No.58 of 2017 before the III Additional District and Sessions Judge, Gobichettipalayam and the same has been dismissed vide order dated 24.07.2018, confirming the order passed by the Trial Court, aggrieved by which, Rajesh is before this Court.

4 Heard Mr. A.V. Arun, learned counsel for Rajesh, who submitted that Rajesh had settled certain properties in the name of his wife Alamelumangai, which fact has also been admitted by her in her evidence, despite which, both the Courts below have erred in awarding maintenance to her. He further submitted that Rajesh was prosecuted for the offence under Section 498-A IPC and was acquitted in C.C. No.475 of 2007 on 26.06.2012. It is his further submission that Rajesh has no means to pay maintenance and hence, the orders passed by the Courts below are liable to be set aside.

5 This Court gave its anxious consideration to the submissions made by Mr. Arun, learned counsel for Rajesh.

6 It is seen that after considering the evidence on record, the Trial Court had awarded maintenance, as stated above. The Trial Court has given two findings, viz., that Rajesh had deserted his family and that he has the necessary means to pay monthly maintenance. Challenging the said order, Rajesh has invoked the revisional jurisdiction of the Sessions Court under Section 397 Cr.P.C. As stated above, the Sessions Court also went into the evidence on record and has confirmed the order passed by the Trial Court.

7 Under Section 397(3) Cr.P.C., a second revision before the High Court cannot be maintained by a party who has invoked the revisional jurisdiction of the Sessions Court. However, a

petition under Section 482 Cr.P.C. is maintainable where it is shown that the orders passed by the Courts are either beyond jurisdiction or opposed to any legal provision or bristled with perversity.

8 The Judicial Magistrate No.I, Gobichettipalayam, does have jurisdiction to entertain a petition under Section 125 Cr.P.C. and thereafter, it cannot be stated that he had passed the order without jurisdiction. Likewise, the Sessions Court also has got the power under Section 397 Cr.P.C. to entertain a revision application against the order passed by a Magistrate under Section 125 Cr.P.C. Thus, this Court does not find any jurisdictional error in the order passed by the Session Court as well.

9 That apart, both the Courts below have appreciated the evidence on record and have arrived at a concurrent finding. The provisions of Section 482 Cr.P.C. cannot be used for re-appreciation of the facts. That apart, for three months, a sum of Rs.4,000/- each has been ordered as maintenance, which, in the opinion of this Court, cannot be said to be very high, given the present cost of index level. As regards the submission of Mr. Arun that Rajesh has no means to pay maintenance, be it noted that both the Courts below have, on facts, negatived this plea and as such, this Court does not find any infirmity in this finding also. Thus, this Court does not find any perversity or illegality in the orders passed by the Courts below warranting interference.

Ex consequenti, this Criminal Original Petition fails and is accordingly dismissed. Connected Crl.M.Ps. are closed.

Sd/-  
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

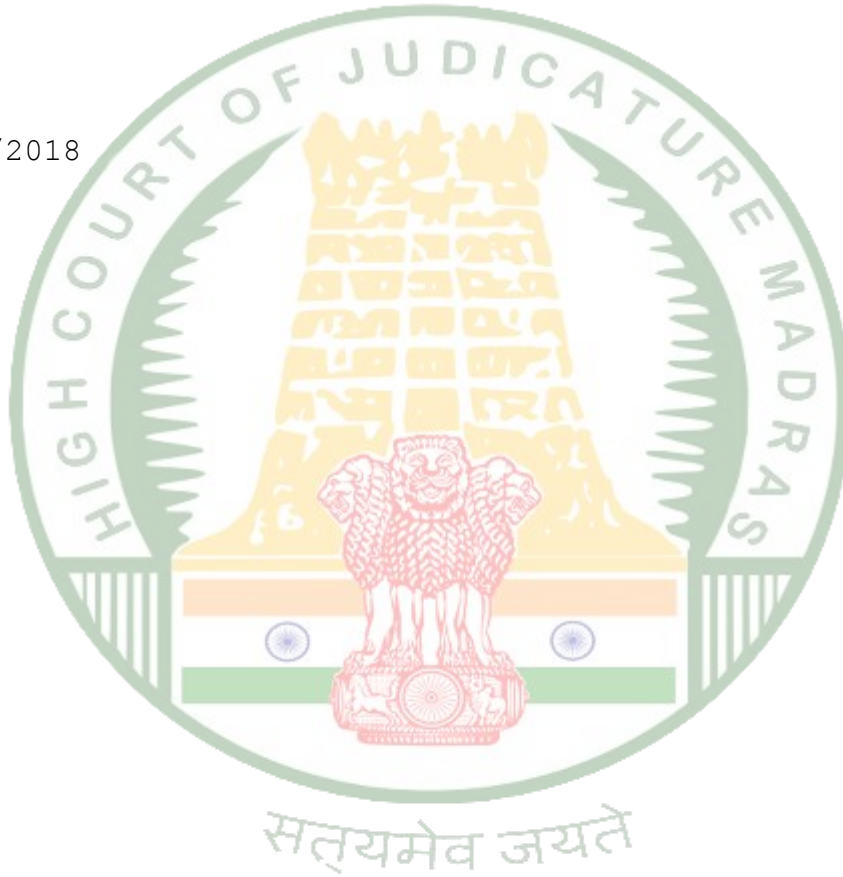
- 1.The III Additional District Sessions Judge,  
Gobichettipalayam.
- 2.The Judicial Magistrate-I,  
Gobichettipalayam.

3.-Do- Thro' The Chief Judicial Magistrate,  
Erode.

+lcc to Mr.A.V.Arun, Advocate Sr.74957

Cr1.O.P. No.25195 of 2018

kk[co]  
srg 14/11/2018



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