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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on:07.02.2018

Pronounced on:22.03.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.(MD) No.15 of 2014
and
M.P.(MD).No.1 of 2014

A.Suresh ... Petitioner

-Vs-

1. Mrs.M.Krithiga
2. Minor S.Harish
3.Minor S.Kanyaswetha ... Respondents

(Minors 2 and 3 are represented by their natural guardian and mother first respondent)

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records from the learned Principal Sessions Judge, Dindigul in Cr.R.P.No.17 of 2012, dated 13.08.2013 and set aside the same.

For Petitioner : Mr.M.Solaisamy

For Respondent : No appearance

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O R D E R

This Criminal Original petition has been filed to set aside the order passed by the learned Principal Sessions Judge in Cr.R.P.No.17 of 2012, dated 13.08.2013.

2.The brief facts are as follows:

The first respondent is the wife and the respondents 2 and 3 are children of the petitioner herein. The respondents herein have filed a petition under Section 125 of Cr.P.C, seeking maintenance and the same was taken on file in M.C.No.11 of 2010 on the file of the Judicial Magistrate, Palani. After enquiry, the Judicial Magistrate has allowed the said petition, directing the petitioner herein to pay a maintenance of Rs.5,000/- per month to each of the respondents herein (totally Rs.15,000/-) and also directed to pay the said amount from the date of petition. He also directed to pay the costs of Rs.1,500/- to the petitioners thereon. Aggrieved by

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the said order, the petitioner herein has filed a revision in Cr.R.P.No.17 of 2012 on the file of the Principal Sessions Judge, Dindigul. The learned Principal Sessions Judge has partly allowed the said revision and modified the order of the Judicial Magistrate to the effect that the petitioner herein should pay maintenance to the first respondent herein at the rate of Rs.3,000/- per month and to the respondents 2 and 3 at the rate of Rs.2,000/- per month each and the aforesaid amount should be paid from the date of filing of the M.C.No.11 of 2010. Challenging the said order, the petitioner in Cr.R.P.No.17 of 2012 has filed the present petition under Section 482 Cr.P.C.

3.Heard the learned counsel for the petitioner. Even though the respondents had received notice, they neither appeared in person nor through advocate. Hence, after hearing the arguments of the learned counsel for the petitioner and perusing the records, the order is being passed.

4.The learned counsel for the petitioner has submitted that the courts below failed to consider that the petitioner is working in a Private Polytechnic and getting monthly salary of Rs.8,750/- only and moreover, he is a dependant on his parents. He further submitted that the courts below failed to consider that the petitioner had lost his good jobs, as the first respondent herein caused great mental agony to the petitioner. He further submitted that the first respondent herein is leading a sophisticated and luxurious life, as her father was a Government Engineer and her brother is a Scholar in a deemed University and she earns a lot through tuition and by tailoring and hence, he requests to set aside the order passed by the Principal Sessions Judge, Dindigul in Cr.R.P.No.17 of 2012.

5.As already stated that the petitioner herein is the respondent in M.C.No.11 of 2010 on the file of the Judicial Magistrate, Palani. During enquiry in M.C.No.11 of 2010, the petitioner herein as a respondent in the said M.C, has filed proof affidavit as chief examination. In the said proof affidavit, he has simply denied the allegation that he was working as a Lecturer in a Private College and also earning Rs.20,000/- by taking tuition. He has stated that he is dependant of his parents' pension only and he has no independent income. He has not at all stated in his proof affidavit that he is working in a Private Polytechnic and getting monthly salary of Rs.8,750/-. Further the said salary certificate also not produced before the trial court and marked as exhibit. The learned Principal Sessions Judge also mentioned in his order that the said salary certificate has not been marked as exhibit. Without marking the said salary certificate and without giving an opportunity to the opposite party, to cross-examine with regard to the said salary certificate, the said certificate cannot be taken into consideration. It appears that the petitioner herein has taken a stand before the trial court that he is not at all working. Under the said circumstances, he cannot blame the courts below that the

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aforesaid salary certificate has not been taken into consideration.

6.The learned Principal Sessions Judge, Dindigul, after taking into consideration the age of the petitioner herein and his education qualifications, came to the conclusion that he would have earned at least Rs.15,000/- per month and directed him to pay Rs.3,000/- to the first respondent herein and Rs.2,000/- to the respondents 2 and 3 each. The petitioner has not produced any evidence to show that the first respondent herein is taking tuition and also doing tailoring work and earning considerably. Therefore, this Court is of the view that the order passed by the learned Principal Sessions Judge, Dindigul in Cr.R.P.No.17 of 2012 does not require any interference by this court. Therefore, this petition is liable to be dismissed.

7.In the result, this Criminal Original Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To
The Principal Sessions Judge,
Dindigul

+1CC to Mr.M.Solaisamy, Advocate, SR.No. 57207

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22.03.2018

vs
AM/JC/SAR 3/19.04.2018/2P/3C

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