



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.R.C. (MD) .No.632 of 2017

M.Ganeshan

: Petitioner

-Vs.-

Irulayee

: Respondent

Prayer: Criminal Revision Case is filed under Section 397 r/w 401 of the Code of Criminal Procedure, praying to call for the records in Cr1.M.P.No.677 of 2017 in M.C.No.11 of 2015 pending on the file of the learned Additional Chief Judicial Magistrate, Madurai and set aside the same.

For Petitioner

: Mr.C.M.Arumugam

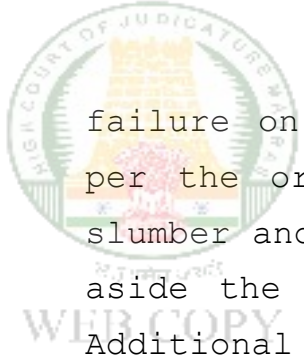
For Respondent

: Mr.KC.Ramalingam

O R D E R

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

2. Ganeshan got married to Irulayee on 24.06.1993 and they have no issues. The couple got estranged and, therefore, Irulayee filed M.C.No.11 of 2015 under Section 125 of the Code of Criminal Procedure before the learned Additional Chief Judicial Magistrate, Madurai. Notice was sent to Ganeshan and the same was returned as "unclaimed". Therefore, the learned Additional Chief Judicial Magistrate, Madurai passed an exparte order, dated 28.05.2015 in M.C.No.11 of 2015, directing Ganeshan to pay Rs.3,000/- (Rupees three thousand only) per month as maintenance to Irulayee. Irulayee filed Cr1.M.P.No.318 of 2017 in M.C.No.11 of 2015 under Section 128(2) of the Code of Criminal Procedure for arresting Ganeshan, in case of



failure on the part of Ganeshan to pay the maintenance amount, as per the order made in M.C.No.11 of 2015. Ganeshan woke up from slumber and filed CrI.M.P.No.677 of 2017 in M.C.No.11 of 2015 to set aside the exparte order, which has been dismissed by the learned Additional Chief Judicial Magistrate, Madurai on 07.07.2017, challenging which, Ganeshan is before this Court.

3. Heard learned counsel for Ganeshan and the learned counsel for Irulayee.

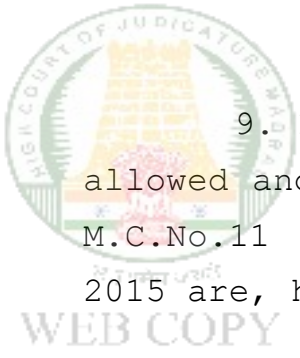
4. At the time of admission of this revision, this Court had directed Ganeshan to deposit Rs.50,000/- (Rupees Fifty Thousand only) to the credit of M.C.No.11 of 2015. Accordingly, Ganeshan has deposited the amount and the same has also been withdrawn by Irulayee.

5. The learned counsel for Ganeshan submitted that the order in M.C.No.11 of 2015 is a cryptic order and if an opportunity is given to Ganeshan to contest the case, he can establish his defence properly.

6. Per contra, the learned counsel for Irulayee submitted that Ganeshan knew about the proceedings in M.C.No.11 of 2015 and he deliberately did not appear before the trial Court and, therefore, no sympathy should be shown to Ganeshan.

7. This Court gave its anxious consideration to the rival submissions.

8. This Court is of the view that since Ganeshan has paid Rs.50,000/- (Rupees Fifty Thousand only), it will serve the interest of justice, if an opportunity is given to him to contest the proceedings on merits. However, Ganeshan is directed to pay an ad-interim maintenance of Rs.1,500/- (Rupees one Thousand Five Hundred only) per month to Irulayee, so that, she can sustain herself during the proceedings.



9. In such view of the matter, this Criminal Revision Case is allowed and the order dated 07.07.2017 in CrI.M.P.No.677 of 2017 in M.C.No.11 of 2015 and the order dated 28.05.2015 in M.C.No.11 of 2015 are, hereby, set aside.

10. Ganeshan and Irulayee are directed to appear before the learned Additional Chief Judicial Magistrate, Madurai, on 30.01.2018, at 10.30 a.m.. Ganeshan shall deposit Rs.1,500/- (Rupees One Thousand Five Hundred only) before the fifth of every English Calender Month to the credit of M.C.No.11 of 2015 before the learned Additional Chief Judicial Magistrate, Madurai. On such deposit, Irulayee will be entitled to withdraw the same. Ganeshan shall file his counter in M.C.No.11 of 2015 on 30.01.2018. The trial Court is directed to proceed with the trial in M.C.No.11 of 2015 expeditiously and decide the case on merits afresh.

Sd/-
Assistant Registrar (T & P)

/True Copy/

Sub Assistant Registrar

To

The Additional Chief Judicial Magistrate,
Madurai.

+1cc to M/S.K.C.RAMALINGAM, Advocate SR.No.40275.

+1cc to M/S.C.M.ARUMUGAM, Advocate SR.No.40214.

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vsg/sm

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