



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON: 25.07.2018
DELIVERED ON : 01.08.2018
CORAM :

THE HONOURABLE MRS. JUSTICE R. THARANI

Cr1. R.C. (MD) No.343 of 2018

WEB COPY

1.Pandiammal

2.Mariammal

... Petitioners

vs.

Pandi

... Respondent

Prayer:- Criminal Revision Petition filed under Sections 397 r/w. 401 of the Code of Criminal Procedure, 1973, to call for the entire records and set aside the order passed in Cr.M.P.NO.151 of 2016 dated 11.08.2017 on the file of the Family Court, Madurai.

For Petitioners	: Mr.T.Senthil Kumar
For Respondent	: Mr.M.Solaisamy

ORDER

Heard Mr.T.Senthil Kumar, learned counsel appearing for the petitioners and Mr.M.Solaisamy, learned counsel appearing for the respondent.

2.This petition is filed to set aside the Judgment passed in Cr.M.P.NO.151 of 2016 dated 11.08.2017 on the file of the Family Court, Madurai for condoning the delay of 1782 days in filing the restoration petition.

3.The first petitioner is the wife of the respondent and the second petitioner is the daughter of the respondent. The petitioners filed a petition under Section 125 of Cr.P.C., for relief of maintenance in M.C.No.30 of 2005 before the Family Court, Madurai and the Family Court ordered to pay a sum of Rs.1,000/- (Rupees One Thousand only) to each of the petitioners as monthly maintenance from the date of filing of the petition. The petitioners filed a petition under Section 128 of Cr.P.C., before the Family Court in Cr1.M.P.No.144 of 2008 and the Family Court ordered the respondent to pay arrears of maintenance to the petitioners on 27.09.2010. Again the petitioners filed the petition in Cr1.M.P.No.31 of 2010 for attachment of the property of the respondent. The petition was dismissed on 18.07.2011 for default of the petitioners. The petitioners filed a restoration petition with delay excuse and the delay excuse petition was numbered as Cr1.M.P.No.151 of 2016 and the same was dismissed on 11.08.2017. Against the order of dismissal, the petitioners has approached this Court with this petition.

4.On the side of the petitioner, it is stated that the respondent has neglected the petitioners and when the petitioners



filed a petition under Section 128 of Cr.P.C., warrant was issued by the Court. When the petitioners filed a petition for attachment of the property of the respondent, the respondent came forward for settlement and requested the petitioners not to persude with the case. Believing the words of the respondent, the petitioners did not appear before the Court and the petition was dismissed for default. It is further stated that the petitioners are not having suficient amount to conduct the case. The petitioners filed a petition for appointment of legal aid counsel and prayed to allow the petition.

5.On the side of the respondent, it is stated that the petition in Crl.M.P.No.31 of 2010 was filed by the petitioner in the year 2010 and within a period of one year, the petition was dismissed for non prosecution and only in the year 2016, the restoration petition in Crl.M.P.No.151 of 2016 was filed and the same was dismissed in the year 2017 and the reasons for the delay is not sufficiently explained and prayed to dismiss the petition.

6.Records perused. The marriage between the first petitioner and the respondent was solemnized on 21.07.1976 and they have two female children. The petitioners filed the petition before the Family Court, Madurai in M.C.No.30 of 2005 dated 05.03.2008. The Family Court ordered the respondent to pay maintenance to the petitioners each a sum of Rs.1,000/- (Rupees One Thousand only) per month. However, the respondent did not pay the maintenance amount. Hence, the petitioners filed an execution petition in Crl.M.P.No.144 of 2008 under Section 128 of Cr.P.C., and obtained order for payment of arrears of maintenance. Later the petitioner filed a petition in Crl.M.P.No.31 of 2010 for attachment of property of the respondent. This petition was dismissed for default on 18.07.2011.

7.On the side of the petitioner, it is stated that the respondent came forward for amicable settlement and believing his words, the petitioners did not persuade the case. Moreover, the petitioners have approached the legal aid for appointment of counsel.

8.From the records, it is clear that the respondent has not paid the maintenance amount and the petitioners are not having sufficient funds to engage a counsel. In the above circumstances, the reasons stated by the petitioners are satisfactory. Hence, the order passed by the lower Court is set aside and Crl.M.P.No.31 of 2010 is restored. The Criminal Revision Case is allowed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-IV)



To

The Judge,
Family Court,
Madurai.

+1CC to Mr.T.Senthil Kumar Advocate in sr.no.76127.

MRN

DS RP SAR 4 11.08.2018 :3P/3C

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