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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.08.2018

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.R.C(MD)No.393 of 2018

and

Crl.M.P. (MD)No.5656 of 2018

Kalidass : Petitioner/Petitioner/
Respondent
Vs.
Manjula : Respondent/Respondent/
Petitioner

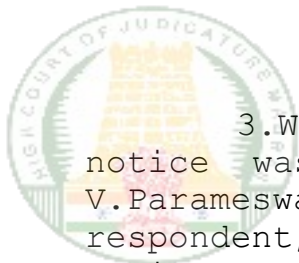
PRAYER: Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the entire records pertaining to the order passed by the learned Judicial Magistrate, Manapparai, Trichy District in Crl.M.P.No.1434 of 2018 in M.C.No.5 of 2017 vide his order dated 28.06.2018 and set aside the same and consequently direct the aforesaid learned Magistrate to restore the proceedings in M.C.No.5 of 2017 pending on his file for the purpose of further adjudication.

For Petitioner : Mr.R.Anand

ORDER

This Criminal Revision case is filed against the order passed by the learned Judicial Magistrate, Manapparai, Trichy District in Crl.M.P.No.1434 of 2018 in M.C.No.5 of 2017, dated 28.06.2018 and set aside the same and consequently direct the learned Magistrate to restore the proceedings in M.C.No.5 of 2017 pending on his file for the purpose of further adjudication.

2.It appears that due to matrimonial discard, the revision petitioner herein has filed H.M.O.P.No.305 of 2017 before the Sub Court, Tiruchendhur for restitution of conjugal rights, whereas the respondent herein has filed M.C.No.5 of 2017 before the learned Judicial Magistrate, Manapparai, seeking maintenance. In the petition filed under Section 125 Cr.P.C., the respondent herein has not shown the correct address of the revision petitioner. Therefore, the learned Judicial Magistrate has passed an ex parte award of maintenance against the revision petitioner. Having come to know about the ex parte order, the revision petitioner has filed a petition to set aside the ex parte order. However, the learned Judicial Magistrate has dismissed the petition on the ground that distress warrant is pending against the revision petitioner and therefore, the petition to set aside the ex parte order, cannot be entertained. Further, he has also pointed out that there no representation for the revision petitioner, when the matter was called. Aggrieved by the said order the criminal revision petition has been filed.



3. When the notice was served to the respondent, the Court notice was received by the Sister of the respondent namely, V. Parameswari. Thereafter, this Court to ensure the service on the respondent, ordered private notice to the respondent. The said notice was returned as 'door locked'.

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4. A perusal of the records indicates that after the ex parte order, warrant was issued against the revision petitioner. When he sought for recall of the warrant, the learned Judicial Magistrate has allowed the same on condition that he should deposit the arrears. The revision petitioner herein has not paid the arrears. However, he sought for recall of the ex parte order. When that application was dismissed, he has preferred the criminal revision case. No doubt, the revision petitioner should be given an opportunity to defend his case but he cannot abstain himself from the proceedings, which will help him to protract the proceedings.

5. In the above said circumstances, the criminal revision case is allowed. The trial Court order dated 28.06.2018 passed in CrI.M.P.No.1434 of 2018 in M.C.No.5 of 2017 is hereby set aside. CrI.M.P.No.1434 of 2018 on the file of learned Judicial Magistrate, Manapparai, is restored on condition that the petitioner shall deposit a sum of Rs.20,000/- on or before 31.08.2018 to the credit of M.C.No.5 of 2017. On such deposit the trial Court shall take up the CrI.M.P.No.1434 of 2018 and pass appropriate orders on merits. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Judicial Magistrate,
Manapparai.

2. The Subordinate Court,
Tiruchendur.

Copy to:

The Section Officer,
Criminal Section,
Madurai Bench Of Madras High Court,
Madurai. (2 Copies)

+1CC to Mr.R.Anand, Advocate in SR.No.80306.

CP

DS/SKN/SAR-2 :27.08.2018: 2P/6C

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