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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.07.2018
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.11883 of 2011
and M.P.(MD)No.1 of 2011

1.Jeya Sree

2.Guhan

... Petitioners/Petitioners/
Petitioners

Vs.

K.Saravanan

... Respondent/Respondent/
Respondent

Prayer : Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to the order dated 28.02.2011 made in Crl.R.P.No.52 of 2010 on the file of the Principal District Sessions Court, Theni confirming the order made in M.C.No.14 of 2008 dated 15.10.2010 on the file of the Chief Judicial Magistrate Court, Theni and set aside the same in so far as the 1st petitioner is concerned as illegal and consequentially allow the M.C.No.14 of 2008 on the file of the Chief Judicial Magistrate Court, Theni.

For Petitioners : Mr.Sulthan Basha
for M/S.Ajmal Associates

For Respondent : No Appearance

ORDER

The petitioners herein applied for maintenance as against the respondent herein by filing M.C.No.14 of 2008 before the learned Chief Judicial Magistrate Court, Theni. The learned Chief Judicial Magistrate Court, Theni by an order dated 15.10.2010 partly allowed the petition.

2.The stand of the respondent herein was that he has already married one Moncia Priyadarshini in the year 2003 and the first petitioner, namely Jeya Sree was the second wife. The learned Chief Judicial Magistrate negatived the plea of the first petitioner for maintenance. Since the respondent admitted that the second petitioner, namely Guhan was born through Jeya Sree, a sum of Rs.3,000/- has been awarded as maintenance to her.



3. Aggrieved by the said order, the petitioners filed a revision petition before the learned Principal District Sessions Court, Theni. The learned Sessions Judge by an order dated 28.02.2011 confirmed the order passed by the learned Chief Judicial Magistrate. Aggrieved by the same, this Criminal Original Petition has been filed.

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4. Though the respondent was served notice and his name is also printed in the cause list, there is no appearance on his side either personal or through counsel.

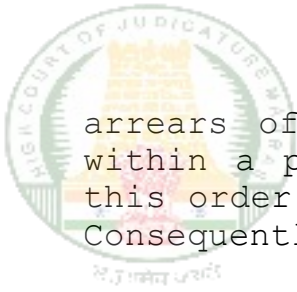
5. The learned counsel appearing for the petitioners would submit that even though there is a bar under Section 392(3) Cr.P.C., in certain exceptional cases, this Court has power to invoke Section 482 Cr.P.C. in respect of granting maintenance. He would further submit that the first petitioner is none other than the respondent's sister's daughter.

6. In this case, the respondent has admitted that the said Guhan was born to him. The respondent has also admitted the factum of marriage with the first petitioner namely, Jeya Sree. His stand is that he has already married to one Moncia Priyadarshini and thereafter, he married the 1st petitioner on account of compulsion of his mother. This Court is unable to appreciate such stand taken by the respondent. Further, the respondent is working as a Government School Teacher. He claims that the marriage was solemnized when he was in a drunken condition. When the parentage of Guhan is admitted and the factum of the marriage is also admitted, this Court is of the view that maintenance will have to be awarded to the first petitioner also.

7. The learned counsel appearing for the petitioners brought to the notice of this Court the decision of the Hon'ble Supreme Court reported in (2014) 1 SCC 188 Badshah Vs. Urmila Badshah Godse and another. The Hon'ble Supreme Court took the view that if the relationship is admitted and the claimant was not aware of the earlier marriage of her husband, plea for maintenance under Section 125 Cr.P.C. cannot be negated.

8. The case on hand is absolutely similar. Therefore, respectfully following the decision of the Hon'ble Supreme Court reported in (2014) 1 SCC 188 Badshah Vs. Urmila Badshah Godse and another, this Court has no hesitation to set aside the order passed by the Court below insofar as the first petitioner is concerned and the order of maintenance granted in favour of the second petitioner by the Court below stands confirmed.

9. In view of the above, the respondent is directed to pay a sum of Rs.3,000/- to the first petitioner also from the date of filing of M.C.No.14 of 2008 on the file of the learned Chief Judicial Magistrate, Theni till date. Such payment shall be made by the respondent on or before 5th of every English calendar month and the



arrears of maintenance in respect of 1st petitioner shall be paid within a period of 4 weeks from the date of receipt of a copy of this order. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The Chief Judicial Magistrate,
Theni.
2. The Principal District Sessions Judge,
Theni.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to M/S.Ajmal Associates, Advocate, SR.No.73605

Copy to

K.Saravanan,
S/o.Kandavel,
Physical Teacher,
Govt Boys Higher Secondary School,
Cromphet,
Chennai.

(Under The Jurisdiction of Judicial Magistrate, Tambaram
& Cromphet Police Station)

Cr1.O.P. (MD) No.11883 of 2011
17.07.2018

GNS

ES/RP/SAR 3/30.08.2018/3P/6C