



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.01.2018

Delivered on : 02.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)No.6350 of 2013

and

M.P.(MD)No.2 of 2013

R.Raja

... Petitioner

Vs.

Alis Stellamary

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in M.C.No.58 of 2007 on the file of the Chief Judicial Magistrate Court, Dindigul, dated 21.06.2010, as confirmed in Crl.R.P.No.18 of 2011 on the file of the Principal Sessions Court, Dindigul, dated 08.11..2012.

For Petitioner

: Mr.S.J.Chakaravarthy

for M/s.Eddy and Emboss Law Firm

For Respondent

: Mr.G.Gomathi Sankar

ORDER

The petitioner herein is the respondent in M.C.No.58 of 2007 on the file of the Chief Judicial Magistrate Court, Dindigul.

2.The respondent herein filed the abovesaid application under Section 125 Cr.P.C., in which, she is seeking the relief to direct the petitioner to pay a sum of Rs.3,000/- per month towards maintenance to her.

3.After concluding trial, the learned Chief Judicial Magistrate, Dindigul, directed the petitioner herein to pay a sum of Rs.1,000/- on or before 5th of every English Calendar month. Aggrieved over the same, the petitioner herein filed Crl.R.P.No.18 of 2011 before the Principal Sessions Court, Dindigul. The said Criminal Revision Petition was dismissed, in which, the order passed by the learned Chief Judicial Magistrate, Dindigul, was confirmed.

4.Aggrieved over the order passed in the Maintenance Case and the Criminal Revision Petition, the petitioner/respondent filed this application under Section 482 Cr.P.C., to set aside the orders passed by the Courts below.



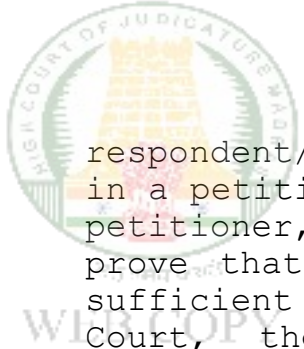
5. Admittedly, the petitioner herein is the husband of the respondent. Immediately after the marriage, within few days, the petitioner and the respondent separated each other after executing a divorce deed dated 27.02.1999. Before that, the petitioner herein agreed to return Sridhana Properties, which were given by the respondent at the time of marriage, for which, an agreement was executed on 15.09.1997. While so, on 03.04.2000 in I.D.O.P.No.82 of 1999 filed by the petitioner herein under Section 22 of the Indian Divorce Act, the learned Principal District Judge, Dindigul, passed an order of judicial separation. The said order is so far not challenged before the appellate forum.

6. After completing all those proceedings, only in the year 2007, the respondent herein filed an application before the learned Chief Judicial Magistrate, Dindigul, under Section 125 Cr.P.C., for the relief of maintenance. Now, the learned counsel appearing for the petitioner/respondent contended that the respondent herein without any sufficient cause, neglected the petitioner. Further, as per the order passed by the learned Principal District Judge, Dindigul, an order of judicial separation is in force. In the above circumstances, after hiding all the previous incidents, the respondent filed an application for maintenance.

7. On the other hand, the learned counsel appearing for the respondent submitted that no law prohibits the respondent from filing the petition for maintenance after the order of judicial separation.

8. On going through the submission made by the learned counsel appearing for the petitioner, it is true that only an order of judicial separation is obtained by the petitioner from the competent forum. Even though the mutual divorce was effected between the petitioner and the respondent as per the law of the land, there is no order of divorce passed with regard to the marriage solemnized between the petitioner and the respondent. In the Trial Court, the petitioner himself admitted after entering into the mutual divorce, he has been re-married and blessed with few children. On the other hand, he did not say anything about whether the respondent has re-married with any person or not. So, after entering into the agreement with regard to mutual divorce, the submissions made by the learned counsel appearing for the petitioner that the respondent voluntarily neglected the petitioner is nothing but lie and invented only for the purpose of filing this petition.

9. In the judgments reported in 1996 (2) LW (Cr1.) 510 (SC) [Gurmit Kaur Vs. Surjit Singh @ Jeet Singh]; 1996 (1) LW (Cr1.) 7 (SC) [Smt. Vanamala Vs. Shri. H.M. Rangamatha Bhatta]; and 2000 (1) MWL (Cr) 287 : 2000 Cri.L.J. 3090 [K. Radhakrishnan Vs. Rani @ Eliyaranil], it has been clearly held that even the divorced woman is not entitled to ask maintenance from her husband. But, in this case, the petitioner has not obtained an order of divorce from the appropriate forum. Apart from that, he has not shown that the



respondent/wife is having sufficient means to maintain herself. So, in a petition filed under Section 125 Cr.P.C., it is the duty of the petitioner, who happened to be the husband of the respondent, has to prove that the respondent, who is seeking maintenance, is having sufficient means to maintain herself. In this case, in the Trial Court, the said factum was not proved by the petitioner. Furthermore, the Trial Court ordered to pay Rs.1,000/- only as maintenance, which was confirmed in the Criminal Revision Petition. Now, considering the present position, the award passed by the learned Chief Judicial Magistrate, Dindigul, is not excessive. Hence, this Criminal Original Petition is not having any merit and the same is liable to be dismissed.

Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Protocol)

/True Copy/

Sub Assistant Registrar

To

- 1.The Principal Sessions Judge,
Dindigul.
- 2.The Chief Judicial Magistrate,
Dindigul.

+1cc to M/S.S.J.Chakaravarthy, Advocate SR.No. 45691
+1cc to M/S.G.Gomathi Sankar, Advocate SR.No. 45865

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