

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:22.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1083 of 2012

and

M.P.No.1 of 2012

S.Shakila Banu

...Petitioner

-Vs-

Shanavas

....Respondent

Prayer:This Criminal Revision is filed under Section 397 read with 401 of Code of Criminal Procedure, to set aside the order dated 25.07.2012 made in C.M.P.No.3110 of 2012 in M.C.No.2 of 2011 on the file of the learned Judicial Magistrate-II, Sankari.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondent : Notice served - No appearance

O R D E R

The Criminal Revision Case has been filed to set aside the order dated 25.07.2012 in C.M.P.No.3110 of 2012 in M.C.No.2 of 2011 on the file of the learned Judicial Magistrate-II, Sankari.

2. The revision petitioner is the wife and the respondent is the husband. The petitioner has filed a case against the respondent under Section 125 of Cr.P.C. before the learned Judicial Magistrate No.II, Sankari for maintenance, which was taken on file in M.C.No.02 of 2011. Summons has been sent to the respondent/husband and the same was returned as ''refused''. Therefore, the learned Magistrate passed an ex-parte order directing the respondent to pay a sum of Rs.3,000/- to the petitioner towards maintenance. Subsequently, the respondent filed a case in C.M.P.No.3110 of 2012 in M.C.No.2 of 2011 praying to set aside the ex-parte order stating that he came to know about the proceedings belatedly. Therefore, he filed a miscellaneous petition to set aside the exparte order passed by the learned Judicial Magistrate dated 09.08.2019. The learned Magistrate allowed the petition filed by the respondent.

3. Challenging the said ex-parte order passed by the learned Judicial Magistrate, Sankari in C.M.P.No.3110 of 2012 dated 25.07.2012, the petitioner/wife has filed the present revision before this Court.

4. The learned counsel for the petitioner/wife would submit that the exparte order has been passed against the respondent only because the respondent refused to accept/receive the summons issued by the Court. But in the miscellaneous petition, the respondent stated that he was not in the know things about the proceedings before the Judicial Magistrate. The respondent has filed a miscellaneous petition with the delay of 317 days. The learned Magistrate has failed to consider the said fact, simply allowed the petition, which warrants interference of this Court.

5. Heard the learned counsel for the petitioner and perused the materials available on record. Despite service of notice, none appeared on behalf of the respondent.

6. Admittedly, the wife filed a case in M.C.No.02 of 2011 under Section 125 Cr.P.C. for maintenance. The learned Magistrate allowed the petition and passed an ex-parte order. Challenging the order, the husband has filed miscellaneous petition for setting aside the exparte order and the same was allowed.

7. On a reading of the entire materials, this Court is of the opinion that the procedure under Section 125 Cr.P.C. itself is summary in nature. The award passed by the learned Magistrate is only an exparte order. The respondent has stated that the summons was not served to him and he came to know about the case only after the order passed.

8. This Court is not inclined to go into the deep about the technicalities. The learned Magistrate has failed to ascertain the fact as to whether summons was served or refused and whether the petition to set aside the ex-parte order was filed in time or not. In the interest of justice, in order to avoid further delay, this Court is inclined to dismiss the revision.

9. The matter is pending from the year 2011 and the case is only for maintenance. The learned Magistrate is directed to conclude the proceedings under Section 125 of Cr.P.C. in M.C.No.02 of 2011 within a period of one month from the date of receipt of a copy of this order.

10. In the result, this revision is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

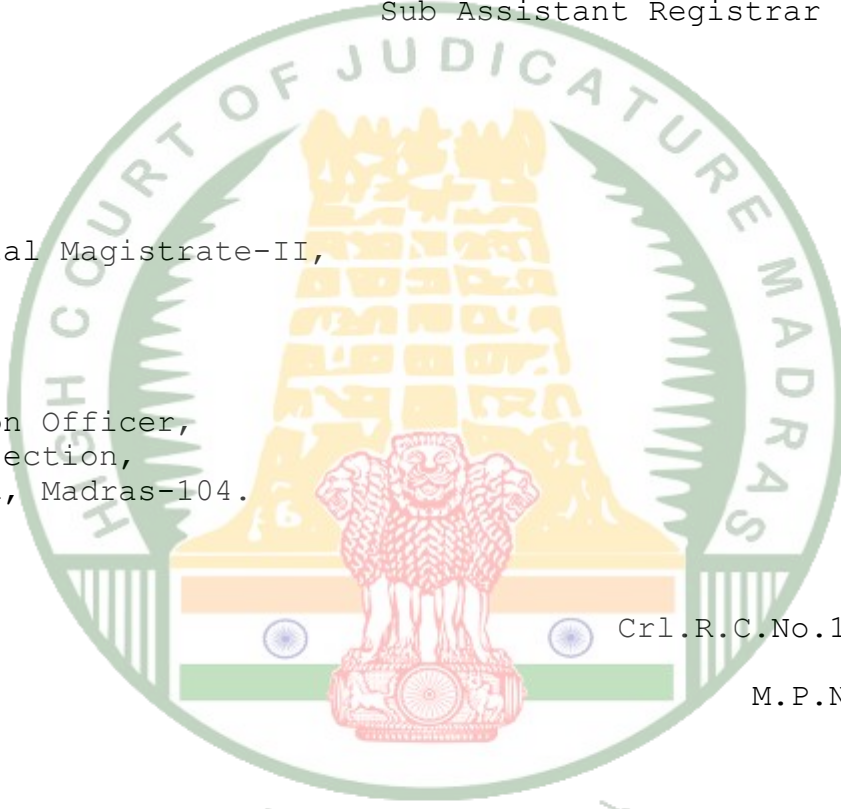
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To

The Judicial Magistrate-II,
Sankari.

Copy to

The Section Officer,
Criminal Section,
High Court, Madras-104.



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srg 28/08/2019

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