

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.1424 and 1459 of 2012

E.SelvakumarPetitioner in both the RCs
Vs.

KarpagalakshmiRespondent in both the RCs

Prayer in both the RCs: This Criminal Revision case filed under Sections 397 and 401 of Code of Criminal Procedure to set aside the orders dated 14.09.2012 passed in C.M.P.Nos.561 & 562 of 2012 respectively in M.C.No.84 of 2009 by the learned Chief Judicial Magistrate Magistrate, Vellore.

For Petitioner : Mr.N.P.Kumar in both the Rcs

For Respondent : Mr.E.Kannadasan in both the RCs

COMMON ORDER

These criminal revision cases have been filed against the orders 14.09.2012 passed in C.M.P.Nos.561 & 562 of 2012 respectively in M.C.No.84 of 2009 by the learned Chief Judicial Magistrate Magistrate, Vellore.

2 The revision petitioner is husband, respondent is wife and she filed a case under Section 125 Cr.P.C. seeking maintenance in M.C.No.84 of 2009 and ex-parte order was passed on 01.12.2011. The petitioner husband has filed present petitions, seeking to condone the delay in filing petition to set aside the ex-parte order and also the petition to set aside the ex-parte order. The learned Magistrate, being not satisfied with the reasons stated by the petitioner to condone the delay, by orders dated 14.09.2012 has dismissed both the petitions, against which the husband is before this Court with these criminal revision cases.

3 According to learned counsel appearing for the petitioner/husband, since the petitioner was bedridden for a period of time, he could not contest the case and file a petition in time to set aside the ex-parte order. The learned Magistrate, without considering the medical conditions of the

petitioner, has dismissed the petitions, which warrants interference. He would further submit that now, the petitioner has got decree of divorce in his favour on the ground of cruelty.

4 Per contra, the learned counsel appearing for the respondent/wife stated that the petitioner with an intention to prevent the respondent/wife from enjoying the fruits of the order of maintenance passed by the Court below, had filed the present petitions seeking condonation of delay to set aside the ex-parte order, for which also no valid reason was assigned by him. Therefore, the Court below had dismissed the petitions, which does not call for any interference of this Court.

5 Heard the learned counsel appearing on either side and perused the materials available on record.

6 It is seen that the petitioner has filed two petitions one is seeking condonation of delay in filing the petitioner to set aside the ex-parte order and another one is to set aside the ex-parte order. The learned Magistrate dismissed both the petitions, since there was no valid reason assigned by the petitioner. It is settled proposition of law that condoning the delay is purely discretionary power of the Court below and unless it has been exercised arbitrarily by the Court below, normally this Court will not interfere with the same. On reading of the order passed by the learned Magistrate, this Court does not find any arbitrariness in dismissing the petition filed by the petitioner seeking condonation of delay and the other order is only consequential order. However, it is brought to the notice of this Court that subsequently, the petitioner has got decree of divorce in his favour on the ground of cruelty. Hence it is left open to the petitioner to bring the above fact to the knowledge of the Court below by filing petition under Section 127 of Cr.P.C. and avail his remedy. In case, the petitioner has filed such a petition, the Court below concerned is directed to dispose of the same in accordance with law.

7 In the result, these criminal revision cases are dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate Magistrate,
Vellore.

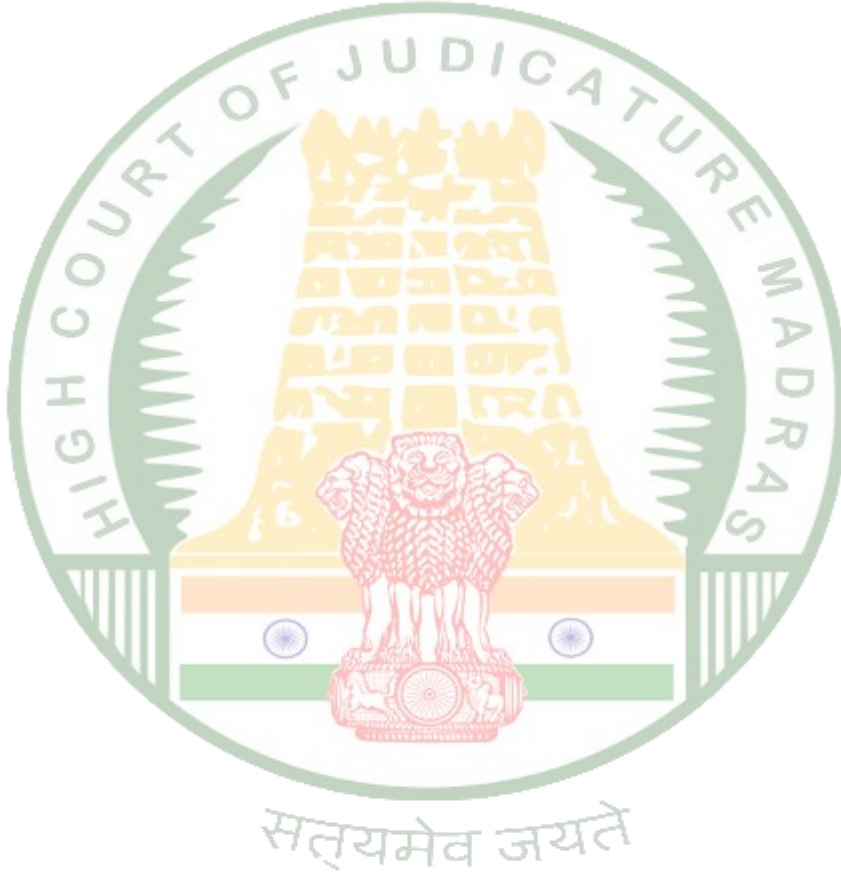
+1cc to Mr.N.P.Kumar, Advocate, SR.67203

+1cc to Mr.E.Kannadasan, Advocate, SR.66700

Crl.R.C.1424 and 1459 of 2012

SPD(CO)

CB(01/10/2019)



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