

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 08.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE DR.G.JAYACHANDRAN

Criminal Revision No.1261 of 2015

and

M.P.No.1 of 2015

Subramani

Petitioner/Respondent

Vs

1. C. Mangammal

2. Minor Chitra
(Reb by her Mother R1)

Respondents/Petitioner's

Prayer: Criminal Revision Petition is filed under Section 397(1) r/w 401 of the Code of Criminal Procedure, praying to set aside the order in FC Crl.M.P.No. 28 of 2014 dated 24.03.2015 on the file of Family Court, Dharmapuri.

For Petitioner : Mr. K. Gandhikumar

For Respondents : Mr. A. Sakthivel

ORDER

This Criminal Revision Petition is directed against the order in FC Crl.M.P.No. 28 of 2014 dated 24.03.2015 made by the trial Court.

2. The Revision Petitioner is the husband. The 1st respondent is the wife of the revision petitioner and mother of the 2nd respondent. The 1st respondent has filed Maintenance case 6 of 1991 on the file of Judicial Magistrate No.I, Dharmapuri seeking maintenance on the ground that she married the Revision Petitioner 8 ½ years ago and the 2nd respondent was born to them. Later, due to the job of Revision petitioner, he has deserted them. The said maintenance case was allowed exparte and the Magistrate has fixed Rs.500/- per mensum for the 1st respondent and Rs.400/- per mensum for the 2nd respondent as maintenance. Subsequently, for recovery of the maintenance arrears, applications were filed. The petitioner has sought for setting aside the exparte order dated 15.05.1991. Though the exparte

order was set aside vide order dated 15.05.1997, later in the Criminal revision petition, the said order was reversed. In the result, the petition setting aside the exparte order with delay was dismissed. While so, the revision petitioner herein was permitted to produce certain documents in the claim petition to disprove the case of the 1st respondent, that she is legally wedded wife of the revision petitioner and the 2nd respondent was born to them. In the said endeavour, the revision petitioner has introduced few documents, and these documents were produced in Crl.M.P No.1580 of 1995. Those documents revealed one Mahesh is the father of the 2nd respondent Chitra. Meanwhile, the entire proceedings was transferred to the Family Court, Dharmapuri, after constituting Special Court for Family Court cases. The application Crl.M.P No.1580 of 1995 was renumbered as Crl.M.P.No.28 of 2014. This application was primarily filed for recovery of maintenance arrears for the period from 13.03.1991 to 05.06.1995. In the said miscellaneous petition, the trial court has considered the documents adduced by the respondents and after appreciating his contention denying the relationship with the 1st respondent and the parentage of the 2nd respondent. The lower Court has negatived his contention, restricted the relief of the 1st respondent seeking arrears of maintenance for a period of 1 year from 04.06.1994 to 05.06.1995.

3. As far as the marital relationship between the revision petitioner and the 1st respondent and the parentage of the 2nd respondent are concerned, the trial court has rejected the documents as well as the contention raised by the revision petitioner and observed that in an application for recovery of maintenance, the merit of the parentage or marital relationship cannot be looked into.

4. The Revision Petitioner herein has aggrieved by the observation made by the Court below has preferred the present Criminal Revision on the ground that the Court below has not considered the School Certificate of the 2nd respondent, which will clearly indicates that the father of the 2nd respondent is Mahesh and not the revision petitioner. Similarly the other documents relied on by the revision petitioner and the ocular evidence let in by him was not properly appreciated by the Court below. Having been permitted to adduce the documents in support of this case, the Court below ought not to have decline to entertain his contention regarding the marital relationship and the parentage on the ground that the petition before him is only regarding the recovery of maintenance arrears and he can not go into some other facts beyond the scope of the application.

5. The learned Counsel appearing for the respondents would submit that the revision petitioner herein married the 1st respondent, while he was in Armed Police Force and the 2nd

respondent was born to them out of their marriage. Having failed to contest the Maintenance case 6 of 1991, and allowing the matter been pending for more than 5 years, attempt is made to protract the proceedings and deprive the respondent from getting their maintenance. Regarding the document produced by the revision petitioner, the learned Counsel appearing for the respondent would submit that the trial Court has considered all the contentions raised by the revision petitioner and had rejected his contention on merits by assigning reasons. The non-marking of School Certificate is only a clerical omission, but the content of the said document has been appreciated by the trial Court.

6. Heard both the counsels. Perused the available records.

7. After the exparte order passed in MC No.6 of 1991, which was though set aside in between again on revision has come to stay. The revision petitioner herein has not able to putforth his defence till the disposal of Crl.M.P No. 28 of 2014 on the file of Family Court, Dharmapuri. In this petition also, the learned Judge appreciated the documents introduced by him and has come to a conclusion that this does not disprove the marital relationship alleged by the 1st respondent or the parentage of the 2nd respondent. The learned Judge has also observed that in an application filed for recovery of maintenance, the facts regarding the marital relationship and the parentage are beyond the scope of that petition. This Court is also of the view that the lower Court has rightly observed so. But at the same time, if really the petitioner has not married the 1st respondent and the 2nd respondent was not born to the revision petitioner, he cannot be forced to pay the maintenance to the respondents.

8. On cumulative assessment of the entire records, this Court finds the 1st respondent though claims that she was married to the revision petitioner long back and the 2nd respondent was born through the wed lock, apart from the oral assertion, she has not produced any documents to substantiate the same and the documents now produced by the revision petitioner to contradict her version also been superficially appreciated and rejected. But as pointed out by the Court below, the appreciation of those documents in the petition for recovery of maintenance arrears may not be appropriate.

9. Therefore, this Court while confirming the observation made by the Court below in the impugned Order, grant liberty to the Revision Petitioner to agitate his defence regarding the marital relationship with the 1st respondent and the parentage of the 2nd respondent by filing appropriate application before the Family Court.

10. With the above observations, the Criminal Revision Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

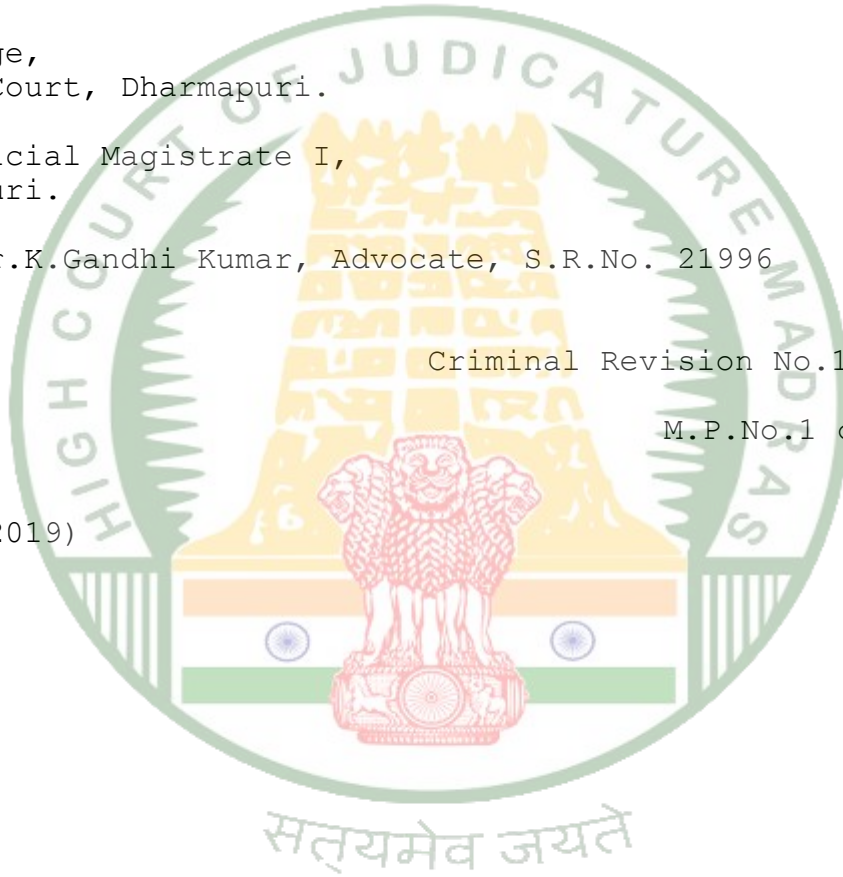
1.The Judge,
Family Court, Dharmapuri.

2.The Judicial Magistrate I,
Dharmapuri.

+1cc to Mr.K.Gandhi Kumar, Advocate, S.R.No. 21996

Criminal Revision No.1261 of 2015
and
M.P.No.1 of 2015

KK(CO)
GN(04/04/2019)



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