

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2019

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

CrI.R.C.No.636 of 2019

and

CrI.MP.No.8820 of 2019

D.Venkatesan

S/o.Late Dhanasekaran

... Petitioner

-Vs-

S.Saraswathi

D/o.Late Soundar Raj

... Respondent

Criminal Revision Petition filed under section 397 r/w 401 of the Code of Criminal Procedure to set aside the order in M.P.No.1064 of 2018 in M.C.No.303 of 2016 dated 16.05.2019 on the file of the learned VII Additional Family Court, Chennai and allow the Criminal Revision Petition.

For Petitioner : Mr.S.Ambigapathi

O R D E R

This Criminal Revision Petition has been filed to set aside the order dated 16.05.2019 passed in M.P.No.1064 of 2018 in M.C.No.303 of 2016 on the file of VII Additional Family Court, Chennai and allow the Criminal Revision Petition.

2. For the sake of convenience, the petitioner and the respondent will be referred to by their name.

3. D.Venkatesan got married to one S.Saraswathi and their marital life ran into rough weather, resulting in the spouses getting estranged. Venkatesan filed H.M.O.P.No.1422 of 2015 seeking divorce and Saraswathi filed M.C.No.303 of 2016 under Section 125 Cr.P.C. seeking maintenance. Both the cases were pending before VII Additional Family Court, Chennai. Venkatesan filed his counter in M.C.No.303 of 2016, however, did not appear before the trial Court for several days. Ultimately, on 19.03.2018, Venkatesan was set ex-parte in M.C.No.303 of 2016 and the Family Court awarded maintenance of Rs.7,500/- p.m. to Saraswathi. On coming to know of it, Venkatesan filed

M.P.No.1064 of 2018 in M.C.No.303 of 2016 to set aside the order dated 19.03.2018, which has been allowed by the trial Court on 16.05.2019, on condition that Venkatesan should pay 40% of the arrears of maintenance to Saraswathi. Challenging the said order, Venkatesan is before this Court.

4. Mr.S.Ambigapathi, learned counsel appearing for Venkatesan, submitted that the marriage was not consummated at all and on the very next day of their marriage, they got separated. He further contended that Venkatesan has filed H.M.O.P.No.1422 of 2015 seeking divorce and the same was also pending before VII Additional Family Court, Chennai. He also contended that Venkatesan is only a call taxi driver and he does not have the means to make the payment.

5. This Court gave its anxious consideration to the submissions of Mr.S.Ambigapathi, learned counsel appearing for Venkatesan.

6. On a reading of the order of the trial Court, it is seen that Venkatesan had not given satisfactory explanation in MP.No.1064 of 2018 for his continuous absence till 19.03.2018. According to Venkatesan, he met with an accident on 01.11.2016, but he has not stated as to when he was discharged from the hospital and why he had failed to appear before the Family Court on 19.03.2018. In spite of these infirmities in the pleadings, the trial Court had shown indulgence to Venkatesan by allowing the petition on condition that he should pay only 40% of the arrears amount of maintenance within a month to Saraswathi. Even otherwise, Saraswathi may be entitled to interim maintenance in a proceedings under Section 125 Cr.P.C. Therefore, the order passed by the trial Court directing Venkatesan to pay 40% of the arrears amount can also be treated as interim maintenance to Saraswathi, as she has not seen the colour of the coin from the year 2016. It is not the case of Venkatesan that Saraswathi has own means to maintain herself.

7. Under such circumstances, this Court does not find any infirmity in the order passed by the trial Court. However, this Court is of the view that the interests of justice will be served, if Venkatesan is directed to pay 30% of the arrears of maintenance to Saraswathi. Accordingly, the order dated 16.05.2019 passed by VII Additional Family Court, Chennai, in M.P.No.1064 of 2018 in M.C.No.303 of 2016 is modified to the effect that Venkatesan shall pay 30% of the arrears of maintenance to Saraswathi within a period of 30 days from the date of receipt of a copy of this order. On such payment, Saraswathi will be entitled to withdraw the same. If Venkatesan fails to pay the said arrears amount within the time stipulated above, the original order of maintenance passed in M.C.No.303 of 2016 dated 19.03.2018 shall stand revived. If the amount is

paid by Venkatesan as directed above, the Family Court may proceed with the trial in H.M.O.P.No.1422 of 2015 and M.C.No.303 of 2016 simultaneously and not jointly.

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

Sd/-
Assistant Registrar (CS II)

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Sub Assistant Registrar

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To

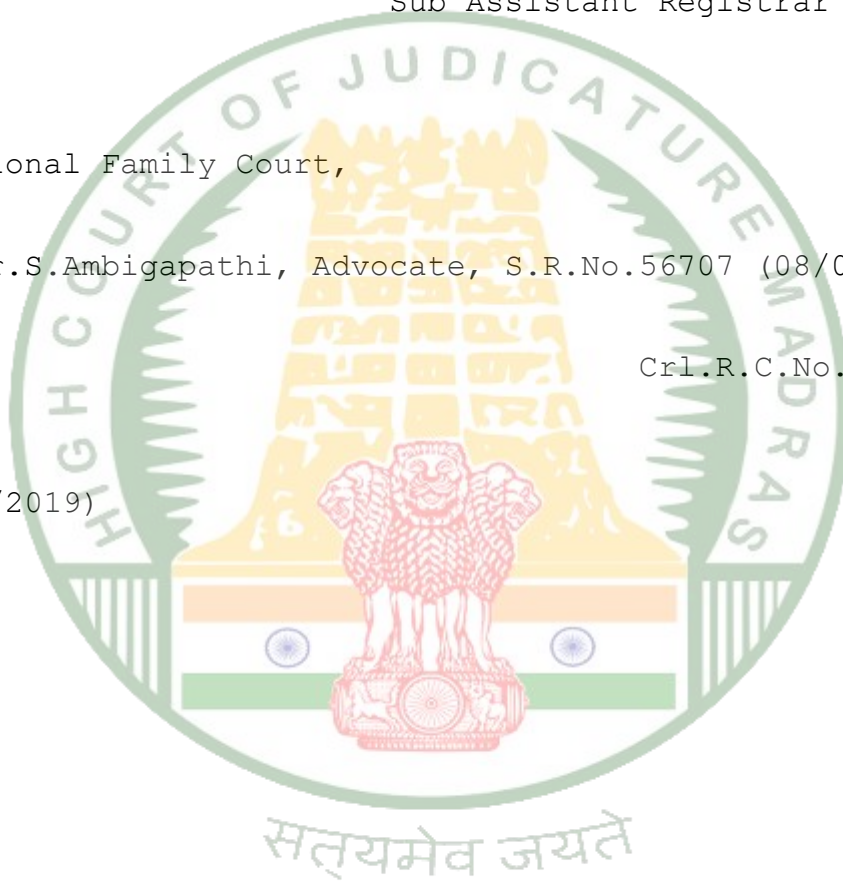
VII Additional Family Court,
Chennai.

+1cc to Mr.S.Ambigapathi, Advocate, S.R.No.56707 (08/07/2019)

CrI.R.C.No.636 of 2019

RSV (CO)

RRS (05/07/2019)



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