

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.6523 of 2017
and
Crl.M.P.No.4780 of 2017

1.A.Sumathy
2.Minor D.Baranidharan

...Petitioners

Vs.

L.Dhakshnamurthy

...Respondent

Prayer:

This Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the Judgment dated 22.11.2016 and made in Crl.R.P.No.6 of 2010 on the file of the Principal Sessions Judge at Chengalpattu against the Judgment dated 09.05.2014 and made in M.C.No.06 of 2007 on the file of the Judicial Magistrate at Tambaram and allow the above Criminal Original Petition on the file of this Court.

For Petitioners : M/s.B.Pratap

For Respondent : No appearance

ORDER

This Criminal Original Petition has been filed seeking direction to set aside the Judgment dated 22.11.2016 and made in Crl.R.P.No.6 of 2010 on the file of the Principal Sessions Judge at Chengalpattu against the Judgment dated 09.05.2014 and made in M.C.No.06 of 2007 on the file of the Judicial Magistrate at Tambaram.

2.This petition has been filed by the wife and son of the respondent aggrieved by the order passed by the Principle District Sessions Judge, Kanchipuram, in Crl.R.P.No.6 of 2014, wherein the maintenance awarded by the learned Judicial Magistrate, Tambaram, was reduced for the first petitioner.

3.The petitioner filed the maintenance case before the Judicial Magistrate, Tambaram, seeking for maintenance. The

Judicial Magistrate, Tambaram, by an order dated 09.05.2014, fixed a sum of Rs.7,500/- payable as monthly maintenance to the first petitioner and Rs.5000/- payable as monthly maintenance to the second petitioner, from the date of filing of the petition. This order was challenged by the respondent before the Principal District Sessions Judge, Kanchipuram.

4.The Principal District and Sessions Judge, Kanchipuram while considering the revision petition, reduced the maintenance payable to the first petitioner on the ground that the first petitioner is well settled and she is owning a house and she is getting rental income from her house. That apart the Court also took into consideration the fact that marriage between the first petitioner and respondent has already been dissolved by the Special Court, Tambaram, in H.M.O.P.No.22 of 2003 and the respondent has already remarried. Therefore, the Court below thought it fit to reduce the maintenance amount awarded in favour of the first petitioner.

5.Insofar as the second petitioner is concerned, the Court below had recorded the stand taken by the respondent to the effect that he has no objection to pay the maintenance to the child.

6.The learned counsel for the petitioner submitted that the respondent is well placed and was working at BSNL Chennai. He was duty bound to maintain the petitioners. The Revision Court went wrong in reducing the maintenance awarded in favour of the first petitioner from Rs.7,500/- to Rs.3000/- only on the ground that she is well placed and she is getting rental income from her house. The learned counsel further submitted that the respondent has not paid any maintenance till date to the petitioners. Therefore, he submitted that the order of the Court below required interference.

7.The notice has been served on the respondent and his name is also printed in the cause list, there is no representation for the respondent.

8.This Court has carefully considered the submissions made on either side and perused the materials available on record.

9.Insofar as the maintenance awarded to the second petitioner is concerned, the same has not been interfered by the Court below and therefore, the second petitioner will be entitled to a maintenance of Rs.5000/- per month fixed by the trial Court, from the date of filing of the petition, till the date he attains majority.

10.Coming to the question of maintenance to be paid to the

first petitioner, the Court below had taken into consideration the Exhibit R4 and Exhibit R5 and the deposition of the first petitioner and has held that the first petitioner is well settled by owning a property and she is already getting rental income from the house. The court below has interfered with the order passed by the trial Court since, this fact has not been taken into consideration by the trial Court.

11.Taking into consideration the facts and circumstances of the case, this Court is of the considered view that fixing a maintenance amount at a sum of Rs.5000/- for the first petitioner will be just and proper, taking into consideration the income of the respondent and the income earned by the first petitioner.

12.In the result, the Order passed by the Court below in Cr1.R.P.No.6 of 2014, dated 22.11.2016, is hereby modified and the maintenance amount payable to the first petitioner is fixed at a sum of Rs.5000/- from the date of filing of the petition.

13.In the result, this Criminal Original Petition is allowed and the respondent is directed to pay the arrears of maintenance to the petitioners within a period of eight weeks from the date of receipt of copy of this order.

14.With the above direction, this Criminal Original petition stands allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

vsn/mpa

To

1. The Principal Sessions Judge,
Chengalpattu.
2. The Judicial Magistrate,
Tambaram, Chennai

+2ccS to M/s.B.Pratap, Advocate, S.R.No.65113

Cr1.O.P.No.6523 of 2017

PPA(CO)
CS/08/08/2019