

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2019

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Crl.O.P.No.24168 of 2019

and

Crl.M.P.No.12789 of 2019

P.Arunkumar

...Petitioner

Vs

1.B.Karthika

2.Nithaseh (Minor)

...Respondents

(Rep by the 1st Respondent the
Mother as Guardian)

PRAYER:

Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order dated 23.07.2019 in Crl.M.P.No.2220 of 2019 in M.C.No.40 of 2016 on the file of the learned Judicial Magistrate, Tambaram.

For Petitioner : Mr.J.I.Rajkumar Roberts

For Respondents : Mr.J.Saravanavel for R1 & R2

O R D E R

This Criminal Original Petition has been filed seeking to set aside the order dated 23.07.2019 in Crl.M.P.No.2220 of 2019 in M.C.No.40 of 2016 on the file of the learned Judicial Magistrate, Tambaram.

2. The order under challenge is rejection of the petitioner's application filed under Section 91 of Cr.P.C., wherein he has sought for marking of certain documents, pertaining to matrimonial disputes of the first respondent's sister and family members. The petitioner herein is the husband of the first respondent and father of the second respondent. The trial court rejected the petitioner's request on the ground that the documents which the petition seeks to call for has no relevance to the present maintenance case, since it pertains to first respondent's sister's litigation.

3. The learned counsel for the petitioner drew the attention of this Court that though the evidence had been let in by the first respondent herein in the cross examination, wherein, reference was made to the certain suggestions with regard to the contract of the first respondent in choosing to live separately and demand for lumpsum settlement, which the respondent has denied, by placing relevant documents at this situation. The learned counsel would submit that the documents are called for, for the purpose of marking the same in the maintenance case, as the same is relevant.

4. The learned counsel for the petitioner would further submit that the relevancy of these documents can be considered only at the time of trial of the case. Therefore, the Court below is not justified in rejecting the petitioner's request at the threshold.

5. The learned counsel for the respondents, on the other hand, would submit that the documents sought to be marked has no relevance in the proceedings, wherein, the first and second respondents are seeking maintenance.

6. Section 125 of Criminal Procedure Code provides for an order for maintenance to the wife, who has been neglected or not maintained. In such circumstances, when a wife is unable to maintain herself and her legitimate child, what is required is to be substantiated in such an application under Section 125 of Criminal Procedure Code, is as to whether the parties are in legitimate or illegitimate relationship of husband and wife and whether such child was born to them. In case the Court is of the view that the wife is entitled to claim maintenance from her husband, the quantum of maintenance would be based on the husband's income. In this narrow compass, the issues can be framed and the application under Section 125 of Criminal Procedure Code could be determined.

7. In the present case, the petitioner seeks to send for the documents pertaining to O.P.No.2659 of 2012. The aforesaid documents are admittedly the first respondent's husband's divorce papers and the suit proceedings pertaining to a settlement deed, filed by the first respondent's sister and her family members. I am unable to comprehend as to how these documents can have any relevance at all in the maintenance case, which is sought by the first respondent herein against the petitioner. The trial court had also rejected the petitioner's application on the ground that such documents pertaining to the first respondent's sister's litigation, is not relevant for the purpose of determining the maintenance case.

8. Section 91 of Criminal Procedure Code reads as follows:

"91. Summons to produce document or other thing

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same

(3) Nothing in this section shall be deemed— (a) to affect, sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers, Books Evidence Act, 1891 (13 of 1891), or (b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority".

9. Under Section 91 of Criminal Procedure Code, whenever the Court considers that the production of any document is necessary or desirable for the purposes of the enquiry or trial under the Code of Criminal Procedure, the Court may issue a summon to the person who is in possession of such document. For the purpose of producing it, Section 91 of Criminal Procedure Code, casts a discretion on the Court to summon such a document, only when the Court is of the view that such document is either necessary or desirable for the purpose of determining the issues involved in the case. सत्यमेव जयते

10. The learned counsel for the petitioner relied upon a decision of this Court in the case of M.R.Jayakumar Vs. S.Senthil reported in (2019) 3 MLJ (Cr1) 536 for the proposition that the relevancy to mark a copy of the document has to be considered at the time of the appreciation of the evidence. In my view, such a finding has been made on the facts of that case, which are all the distinguishable. In view of the wordings employed under Section 91 of Criminal Procedure Code, this Court is of the view that the discretion is vested on the Court to mark the document on the basis of its relevancy or desirability.

11. The learned Judicial Magistrate was of the view that the litigation pertaining to the respondent's family members are not relevant for the purpose of determining the issue involved in the maintenance case and had therefore, rejected the application. In view of discretion vested in the learned Magistrate under Section 91 of Criminal Procedure Code, I do not find any infirmity in such a finding. As a matter of fact, this Court is of the view that the trial court had rightly appreciated the discretion and the powers vested in it and accordingly had passed the impugned order.

12. It is seen that the maintenance case was filed by the first respondent and her minor child, in the year 2016. Though three years have passed and the trial had also commenced in middle of the year 2018 itself, the trial has been prolonged for more than one year. The present application which came to be filed on 07.03.2019 has stalled the maintenance case all these months. In my view, the application calling for such irrelevant documents under Section 91 of Criminal Procedure code itself is an abuse of the process of law. Since the maintenance case has been stalled in view of filing of such an application as well as the fact that the respondent has been unnecessarily constrained to defend this vexatious filing of the Criminal Original Petition before this Court, this Court is of the view that the petitioner must be made liable to pay costs to the respondents.

13. In the light of the above observations, the Criminal Original Petition stands dismissed. The petitioner herein shall pay a sum of Rs.5,000/- to the first respondent by way of costs and file receipt of proof of the payment of costs before the trial court. The learned Magistrate shall also be entitled to complete the maintenance case proceedings as expeditiously as possible, in any event, within a period of sixty (60) days from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vkr

To

1. The Judicial Magistrate,
Tambaram.

2. The Additional Public Prosecutor,
High Court of Madras.

+lcc to Mr.J.Saravanavel, Advocate, S.R.No.84170
+lcc to Mr.J.I.Rajkumar Roberts, Advocate, S.R.No.84319

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SAI (CO)
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