

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.26598 of 2017

and

CRL.M.P.No.15294 of 2017

Amirtharaj

...Petitioner

Vs.

1. Tmt.Krishnaveni

2. Minor Anushree

3. Minor Ashwanth

...Respondents

Minor represented by

Next Friend guardian Mother

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order dated 04.11.2017 made in C.R.P.No.3 of 2017 on the file of the I Additional District and Sessions Court, Tiruppur by allowing this Criminal Original Petition.

For Petitioner : Mr. R.Prabakar

For Respondents 1 to 3 : Mr.Vijayaraghavan

ORDER

This Criminal Original Petition has been filed against the order passed in C.R.P.No.3 of 2017 confirming the order passed in M.C.No.4 of 2016 wherein the petitioner was directed to pay maintenance of a sum of Rs.4000/- per month each to the respondents.

2. The respondents filed a petition before the Chief Judicial Magistrate, Tiruppur seeking for maintenance under Section 125 of Cr.P.C. The trial Court, after considering the entire materials placed on record and the evidence adduced by the parties, thought it fit to fix the maintenance amount at Rs.4000/- to each of the respondent every month.

3. Aggrieved by the said order, the petitioner filed C.R.P.No.3 of 2017 before the I Additional District and Sessions Court, Tiruppur. The revision Court, on considering the entire

materials placed on record confirmed the order of the trial Court. Aggrieved by the same, the present criminal original petition has been filed by the husband.

4. The learned counsel for the petitioner submitted that the trial Court has fixed the maintenance amount without even determining the income of the petitioner. The learned counsel also brought to the notice of this Court the finding of the trial Court to the effect that both the parties have not proved the employment of the petitioner and his income. However, the trial Court has fixed the maintenance amount based on a mere presumption and therefore, the same is not sustainable. The learned counsel submitted that the revision Court has mechanically confirmed the said order without dealing with any of the grounds raised by the petitioner.

5. The learned counsel appearing on behalf of the respondent submitted that the petitioner has not paid even a single pie till date to the respondents and the respondents have already taken steps to execute the order passed by the trial Court for recovery of the arrears of maintenance amount. The learned counsel further submitted that Section 125 of Cr.P.C proceedings are summary in nature and the Court need not deal with it like a regular suit. The Court can always take into consideration the employment of the petitioner and the bare minimum requirements of the respondents and accordingly, fix the maintenance amount. The learned counsel submitted that even other wise the petitioner is duty bound to maintain his wife and his two children. The learned counsel further submitted that the trial Court has fixed a reasonable amount as maintenance and the same has also been confirmed in the revision petition and therefore, this Court cannot interfere with the said order since it will amount to a second revision petition which is barred under Section 397 (3) of Cr.P.C. Therefore, the learned counsel submitted that the order of the Court below has to be sustained as it is.

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

7. It is true that the scope of interference of 482 of Cr.P.C. is very limited and this Court cannot exercise its jurisdiction like a second revision since the same is expressly barred under Section 397(3) of Cr.P.C. However, this Court is able to find that the order of the trial Court is patently illegal regarding the fixation of the maintenance amount and in the interest of justice, the same requires to be interfered by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

8. It is seen that the trial Court has not determined the income of the petitioner. Even this fundamental requirement is not satisfied by the trial Court before fixing the maintenance amount for the respondents. Therefore, this Court has to necessarily exercise its jurisdiction and order a reasonable maintenance amount to the respondents.

9. It is an admitted case of the petitioner that he is working in a Textile Mill in the packaging department at Tiruppur. Therefore, the petitioner must be earning atleast a sum of Rs.20,000/- per month. Taking into consideration, the bare minimum that is required for the respondents to maintain themselves, this Court deems it fit to fix the monthly maintenance for the wife, a sum of Rs.3000/- and for the two children, a sum of Rs.3,500/- each and in total, a sum of Rs.10,000/- every month.

10. The petitioner should also pay the arrears of maintenance that has accumulated till now by taking the monthly maintenance at a sum of Rs.10,000/- as fixed by this Court. This arrears now works out to Rs.4,10,000/-.

11. This Criminal Original Petition is partly allowed by modifying the maintenance amount with the following directions:

a) The petitioner shall pay a monthly maintenance of Rs.3000/- to the 1st respondent and Rs.3,500/- each to the 2nd and 3rd respondents starting from July 2019 on or before the 5th of every succeeding month.

b) The petitioner shall pay the arrears of maintenance of a sum of Rs.4,10,000/- in three instalments. The first instalment of a sum of Rs.1,50,000/- shall be paid to the 1st respondent directly within a period of four weeks from the date of receipt of copy of this order. The second instalment of a sum of Rs.1,50,000/- shall be paid within a period of six weeks thereafter to the 1st respondent directly. The third instalment of a sum of Rs.1,10,000/- shall be paid within a period of four weeks, after the payment of the second instalment to the 1st respondent directly.

c) The petitioner shall strictly comply with the orders passed by this Court and it is made clear that if the petitioner fails to comply with this order, it is open to the respondent to execute this order and claim the arrears of maintenance / monthly maintenance from the petitioner.

Consequently, the connected miscellaneous petition is closed.

Sd/-
Deputy Registrar (CJ.Conf)

//True copy//

Sub Assistant Registrar

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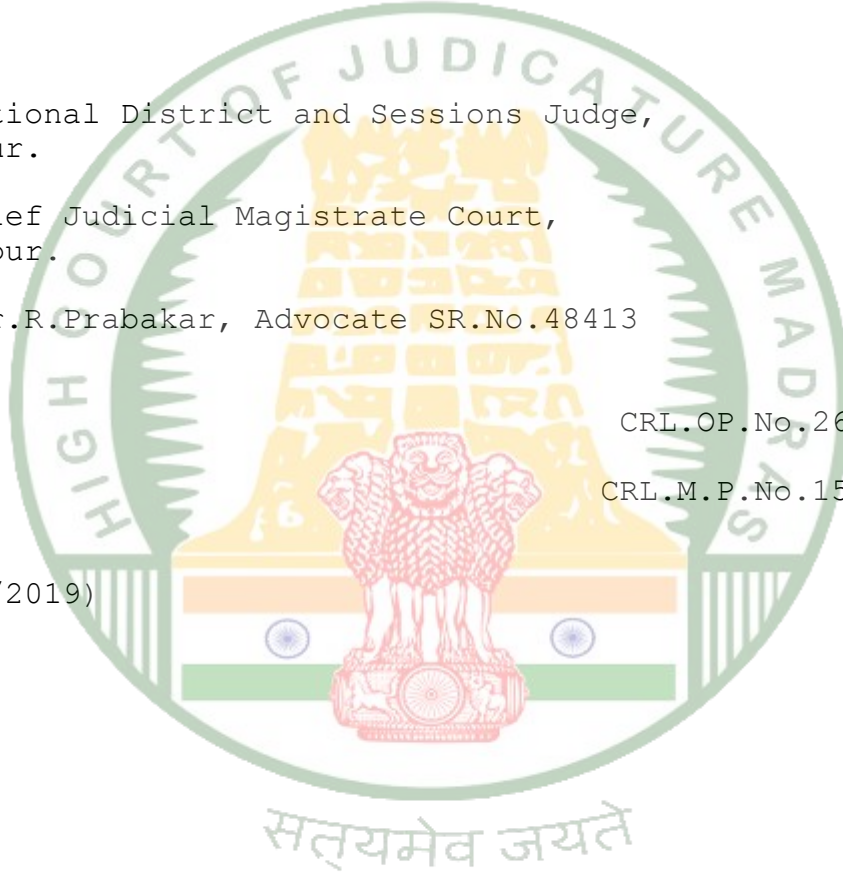
To

1. I Additional District and Sessions Judge,
Tiruppur.
2. The Chief Judicial Magistrate Court,
Tiruppur.

+1cc to Mr.R.Prabakar, Advocate SR.No.48413

CRL.OP.No.26598 of 2017
and
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SSD (CO)
GMY (05/07/2019)



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