

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.28343 of 2017
and
CrI.M.P.No.16091 of 2017
& CrI.M.P.No.2586 of 2018

Dr.P.Saravanarajan

...Petitioner

Vs.

C.Vijaya

...Respondent

PRAYER:Criminal Original Petition is filed under Section 482 of Cr.P.C., to set aside the order dated 08.11.2017, made in Criminal Revision Petition No.4/2017, on the file of Principal Sessions Judge, Kancheepuram District at Chengalpattu, by confirming the order dated 14.02.2017, made in M.C.No.22/2014, on the file of Judicial Magistrate, Alandur, by allowing the present Criminal Original Petition.

For Petitioner : Mr.K.Murugan

For Respondent : Mr.V.Paarthiban

ORDER

This Criminal Original Petition has been filed by the petitioner to set aside the order dated 08.11.2017, made in Criminal Revision Petition No.4/2017, on the file of Principal Sessions Judge, Kancheepuram District at Chengalpattu, by confirming the order dated 14.02.2017, made in M.C.No.22/2014, on the file of Judicial Magistrate, Alandur, by allowing the present Criminal Original Petition.

2.The petitioner filed a petition in Criminal Revision Petition No.4/2017 under Section 397 Cr.P.C. against the order passed by the Judicial Magistrate, Alandur in maintenance case No.22/2014 dated 14.02.2017. The petitioner / husband filed divorce petition before the Family Court at Madurai in O.P.No.781/2014, contending that his wife is having independent means and she often quarrelled and neglected her husband and made false allegations of harassment. The respondent contended that the petitioner is reasonably employed in Makkal TV, Shalini

TV and also guest lecturer at SRM University and getting more than a lakh per month and prayed for maintenance at the rate of Rs.30,000/- per month. After considering the oral and documentary evidence adduced on both sides, the learned Judicial Magistrate, Alandur awarded a sum of Rs.15,000/- per month towards maintenance. Aggrieved by the said order, the petitioner preferred a Criminal Revision Petition before the Principal Sessions Judge, Kancheepuram District at Chengalpattu. The learned Principal Sessions Judge, after perusal of the entire records and evidence of both the parties found that the husband is well qualified post graduate with Ph.D., and he was employed in Jaya TV and in view of the complaint made by his colleague for sexual harassment, he was removed from the service. The respondent wife alleged that he is employed in some other T.V.Channels. Admittedly, the petitioner and the respondent are not living together. He is in a position to pay Rs.1,00,000/- as educational expenses to his son but he is not even paying any amount to his wife. It was alleged by the husband that his wife is running a beauty parlour and she is having sufficient means but no evidence was produced to show that his wife is having a sufficient means. Simply because the husband moved the Family Court for divorce the relief of maintenance cannot be refused to the wife. Considering the educational qualifications and experience, the learned Principal Sessions Judge dismissed the Criminal Revision Petition and confirmed the order passed by the Judicial Magistrate, Alandur in M.C.No.22/2014 dated 14.02.2017. Hence, the petitioner is before this Court.

3.Heard the counsel on either side.

4.It is seen that the petitioner filed a petition in M.C.No.22/2014 as against the respondent. In which, the Trial Judge ordered a sum of Rs.15,000/- towards maintenance. Against the said order, the petitioner filed a Criminal Revision Petition No.4/2017 on the file of the learned Principal Session Judge, Kancheepuram District at Chengalpattu. The learned Principal Session Judge, Kancheepuram District has also confirmed the order passed by the learned Judicial Magistrate, Alandur in M.C.No.22/2014 dated 14.02.2017.

5.It is also seen that the petitioner filed a divorce petition in H.M.O.P.No.781/2014, in which, he has stated that he is working in Makkal T.V. And Shalini T.V. and working in SRM university and earning a sum of Rs.1 lakh per month. Therefore, the award of maintenance of Rs.15,000/- per month passed by the Trial Court is not huge for the petitioner. Moreover the respondent wife is not having any income. Therefore, this Court finds no merit in this case.

6.Further, the learned counsel for the respondent referred the judgment passed by this Court in Criminal Revision Case No.512 of 2010 & Criminal Original Petition No.23229 of 2010 in CDJ 2015 MHC 3324. The relevant portion of the order is extracted hereunder:

"16.So far as the Criminal Original Petition is concerned, this Court is of the view that once the revisional provision is invoked by a party before the Sessions Court, he/she cannot again invoke the extraordinary jurisdiction of the High Court under Section 482 of Cr.P.C. In this regard, a reference could be placed in the decision reported in AIR 1997 SC 987 (Krishnan Vs. Krishnaveni), wherein it has been held as follows:

"Ordinarily, when revision has been barred by Section 397(3) of the Code, a person accused / complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent power of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code".

In another decision reported in 2014 (2) MWN(Cr.) 207 (D.Prabhu Srinivasan Vs.Dr.G.Ramaprabha), it has been held as follows:

"A reading of sub-Section(3) of Section 397 would make it clear that if an application under this Section has been made by any person either to the High Court or to the Sessions Court, no further application by the same person shall be entertained by the other of them."

7.Therefore, the application under Section 482 of Cr.P.C. invoked by the petitioner is only the abuse of process of law and for the interest of justice called for such exercise at the instance case, the petitioner filed a maintenance petition in M.C.No.22/2014 under Section 125 Cr.P.C. as against the respondent and he has also filed a Criminal Revision Petition No.4/2017 before the Principal Session Judge, Kancheepuram. Now he has invoked 482 of Cr.P.C.

8.Further, this Court finds no infirmity or illegality in the order passed by the Courts below. As such, the orders passed by the Courts below do not warrant interference of this Court. Accordingly, this Criminal Original Petition stands dismissed.

9.At the request of the petitioner, the petitioner is permitted to pay the arrears of maintenance amount due to the respondent in four equal monthly installments. The 1st instalment shall commence from the month of April. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Sessions Judge
Kancheepuram District
Chengalpattu

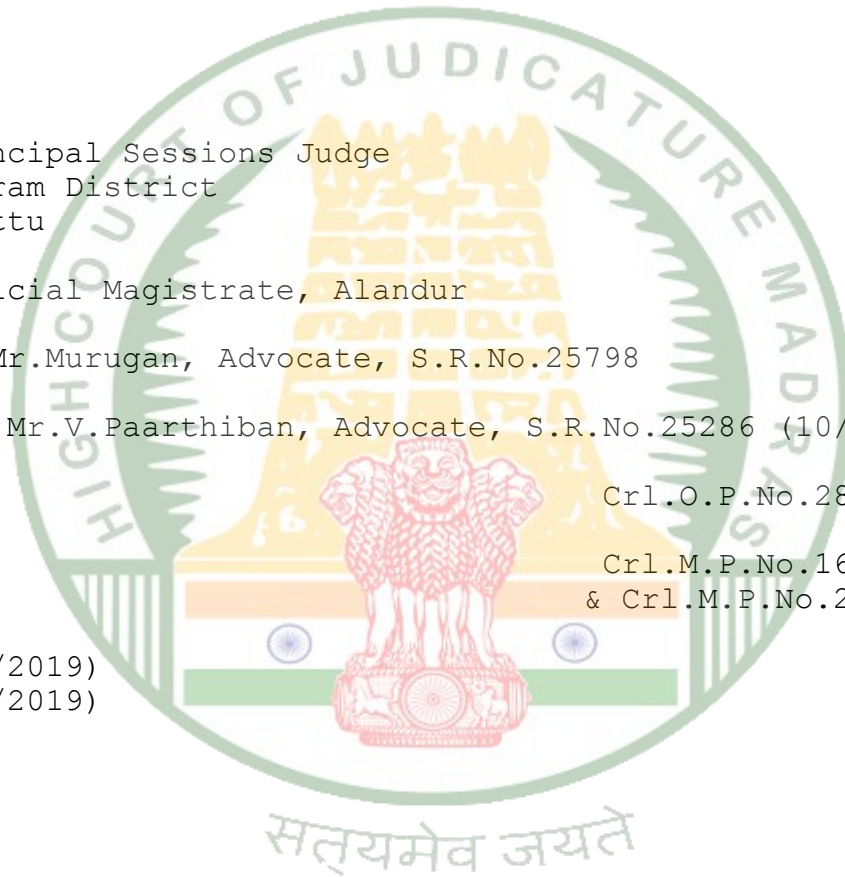
2.The Judicial Magistrate, Alandur

+1 cc to Mr.Murugan, Advocate, S.R.No.25798

+2 ccs to Mr.V.Paarthiban, Advocate, S.R.No.25286 (10/06/2018)

Crl.O.P.No.28343 of 2017
and
Crl.M.P.No.16091 of 2017
& Crl.M.P.No.2586 of 2018

NMI (CO)
SSM(22/04/2019)
SSM(10/06/2019)



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