

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1178 of 2018

and

Crl.M.P.No.13852 of 2018

R.Venkatesan

... Petitioner

Vs

Kamatchi

... Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the order dated 18.07.2018 passed by the Chief Judicial Magistrate Court at Thiruvallur in M.C.No.9 of 2013.

For Petitioner : Mr.C.Velmurugan

For Respondent : Mr.Arun Prasath

O R D E R

This Criminal Revision Case has been filed to set aside the order dated 18.07.2018 made in M.C.No.9 of 2013, on the file of the learned Chief Judicial Magistrate, Thiruvallur.

2. The respondent herein has filed a petition against the petitioner herein under Section 125 of Cr.P.C., before the learned Chief Judicial Magistrate, Thiruvallur, in M.C.No.09 of 2013 for the maintenance. After the trial proceedings, the learned Chief Judicial Magistrate, Thiruvallur awarded a sum of Rs.7,000/- per month to the respondent for monthly maintenance and to pay a sum of Rs.15,000/- per annum to the respondent for the medical expenses. As against the said order, the revision petitioner filed the present Criminal Revision Case before this Court.

3. The learned counsel appearing for the petitioner would submit that earlier the respondent married one Chandrasekhar in the year 1991. After one year of the marriage, her husband was died. The respondent did not produced any document to show that her husband was died. Even after 10 years there is no evidence like Voter ID, Electoral name List, etc., to prove that her husband was died. All the documents shows that the

said Chandrasekar is husband of the respondent herein. Further, the learned counsel for the petitioner stated that the respondent had a son by name Devaraj, aged 17 years at the time of filing the maintenance petition in the year 2013. Thereafter, the respondent states that she married the petitioner herein in Thirupathi Devasthanam Temple without distributing invitation. At the same time, she did not produce any marriage certificate or any other relevant documents, before the Learned Chief Judicial Magistrate Court at Thiruvallur. Therefore, the learned counsel prays to set aside this revision case.

5. The learned counsel appearing for the respondent would submit that the petitioner married the respondent, after the death of her first husband. Out of their wed-lock, they blessed with one female child namely Priyadharshini on 29.06.2011. Due to illness, the female child was died on 10.10.2011. The birth and death certificates of the deceased child Priyadharshini, shows that revision petitioner is the father of the child. These two certificates were proved that the petitioner is the father of the deceased Priyadharshini. The petitioner deserted the respondent without any valid reason. The respondent was living with her mother for the past 21 years along with her son. Hence the learned counsel for the respondent prays this Court to confirm the order of the Court below.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

7. Admittedly, in this case the respondent has not produced any valid document to show that the first husband/Chandrasekar died. The respondent in his petition has stated that she got married during 1991 and her first husband died in the year 1992 and she has a son through him aged about 17 years and studying 12th standard. Even assuming, at the time of filling M.C during 2013, the age of the respondent's son is 17 years, he should have born during the year 1996 and not earlier. If that being the actual position, the son should have born after the death of her first husband, hence, the legitimacy of the child is in question. The respondent has not proved his case with valid documents. Once there is a dispute between the parties with regard to their marriage. The trial Court has wrongly come to the conclusion she is entitled to get maintenance from the petitioner and hence the order of the trial Court is liable to be set a side.

8.In the result, the Criminal Revision stands allowed by setting aside the order dated 18.07.2018 made in M.C.No.09 of 2013 on the file of the learned Chief Judicial Magistrate, Thiruvallur. Consequently, connected miscellaneous petition is closed.

sd/
ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

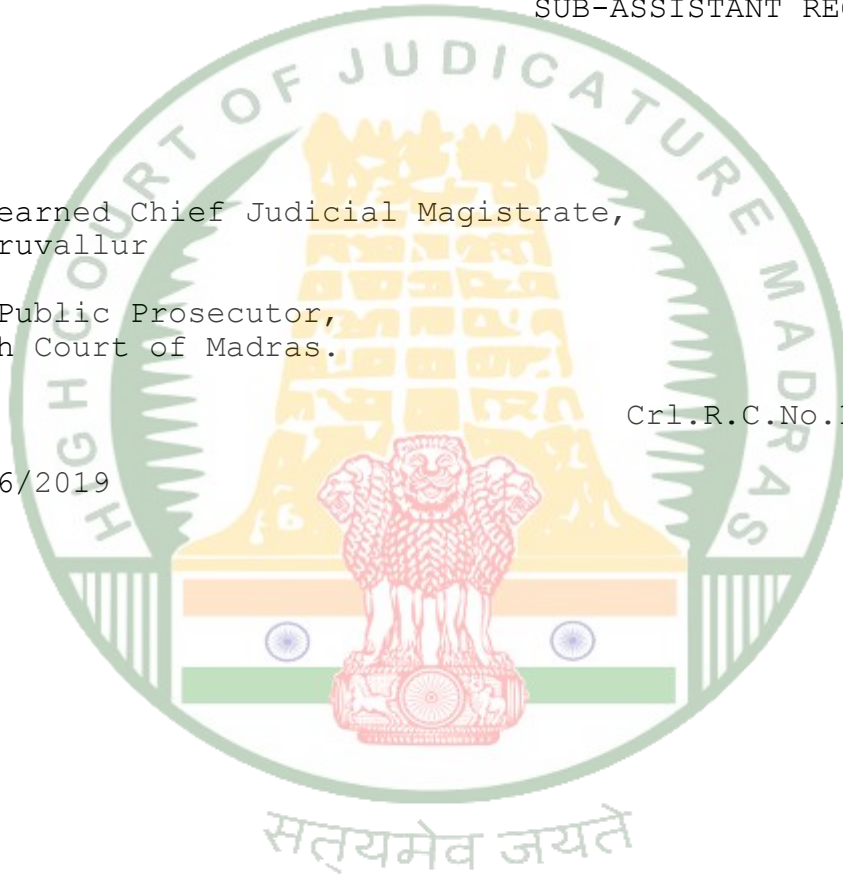
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To

- 1.The learned Chief Judicial Magistrate,
Thiruvallur
2. The Public Prosecutor,
High Court of Madras.

Crl.R.C.No.1178 of 2018

MK:08/06/2019



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