

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.1306 of 2018

Karunanithi

...Petitioner

-Vs-

Uma

...Respondent

This Criminal Revision Case is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the order dated 07.09.2018 made in C.M.P.No.8597 of 2014 in M.C.No.2 of 2007 on the file of the learned Judicial Magistrate, Cheyyar.

For Petitioner : Mr.B.Kumarasamy

For Respondent : Mr.V.R.Appaswamy

O R D E R

The petitioner is husband and respondents is wife. The respondent/wife has filed a case under Section 125 Cr.P.C. seeking maintenance, which was taken on file in M.C.No.2 of 2007. The learned Judicial Magistrate, by order dated 21.07.2010, has awarded a sum of Rs.2,000/- as maintenance, against which the petitioner has preferred an appeal and the same is pending. Since, the subsequent to the order of maintenance, the respondent/wife has got employment, the petitioner has filed a petition under Section 127 (2) Cr.P.C. seeking to set aside the order of maintenance. The learned Magistrate, by order dated 07.09.2018, had dismissed the petition filed by the petitioner, against which, the petitioner is before this Court with the present criminal revision.

2 According to the learned counsel appearing for the petitioner, since the respondent/wife without any valid reason is living separately, the petition filed by the petitioner in H.M.O.P.No.87 of 2007 seeking divorce was allowed on the ground of cruelty and desertion. The respondent/wife has preferred an appeal against the decree of divorce, which was also dismissed. Further, subsequent to the order of maintenance granted by the Magistrate, the respondent/wife has got employment. Hence the petitioner has filed a petition to set aside the order of

maintenance and the petitioner has produced a salary certificate to show that the respondent/wife is employed and earning money, which would be sufficient to maintain herself. The learned Magistrate, without appreciating the change of circumstances, has erroneously dismissed the petition, which warrants serious interference.

3 Heard the learned counsel appearing on either side and perused the materials available on record.

4 The learned counsel appearing for the respondent/wife is not in a position to say anything about the employment of the respondent/wife. The learned Magistrate has awarded a sum of Rs.2000/- as maintenance on 21.07.2010. The petitioner has got decree of divorce in his favour on 07.09.2012 and according to the petitioner from the year 2013 onwards, the respondent/wife is working and earning money. The appeal filed by the respondent/wife against the decree of divorce, was also dismissed and is not disputed. The wife is entitled for maintenance only when she is unable to maintain herself and if the husband despite having sufficient means, neglected or refused to maintain her wife. In the present case, subsequent to the order of maintenance, firstly the petitioner/husband has got decree of divorce, on the ground of cruelty and desertion and secondly, the respondent/wife has got employment. The learned Magistrate, without appreciating the above facts and change of circumstances, has dismissed the petition filed by the petitioner/husband seeking to set aside the order of maintenance.

5 Hence, for the reasons stated above, this Court is inclined to set aside the order dated 07.09.2018. Accordingly, the order dated 07.09.2018 made in C.M.P.No.8597 of 2014 is hereby set aside. The respondent/wife is not entitled for maintenance and the petitioner/husband need not pay any maintenance to the respondent/wife from the date of her employment. The criminal revision is allowed accordingly.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate II, Cheyyar.

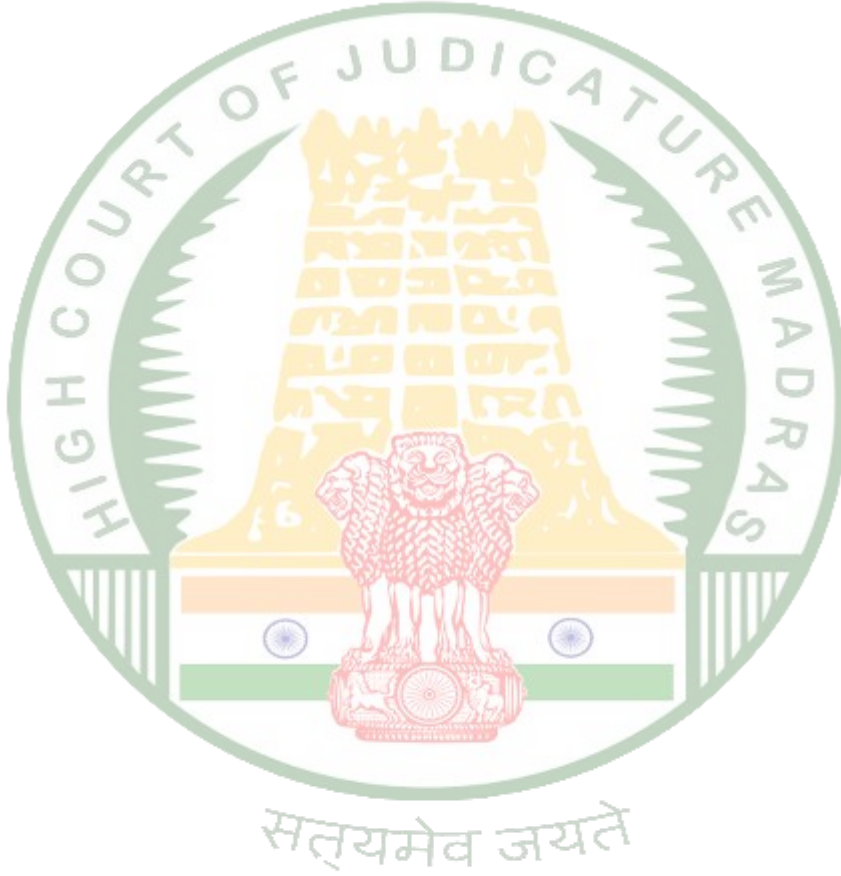
+1cc to Mr.V.R.Appaswamee, Advocate, S.R.No. 16365

+1cc to Mr.B.Kumarasamy, Advocate, S.R.No.16160

Cr1.R.C.No.1306 of 2018

VSN II (CO)

GN (02/04/2019)



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