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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 22.07.2019

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

CrI.RC.(MD)No.378 of 2019

and

CrI.MP(MD)No.5625 of 2019

A.Ramadhas : Revision Petitioner/ Petitioner/Respondent

Vs.

1.S.Ananthakrishnan

2.C.Chellathai : Respondents/Respondents/ Petitioners

Prayer: Criminal Revision filed under Section 397 r/w 401 of the Code of Criminal Procedure against the order, dated 30.04.2019 passed in Cr.M.P.No.97 of 2019 in MC No.17 of 2017 by the District Munsif-cum-Judicial Magistrate, Eraniel.

For Revision Petitioner : Mr.D.Srinivasaragavan

For Respondents : Mr.V.Vishnu

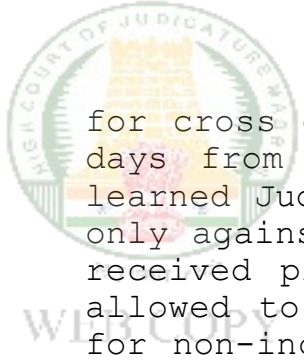
O R D E R

This Criminal Revision is directed against the order, dated 30.04.2019 passed in Cr.M.P.No.97 of 2019 in MC No.17 of 2017 by the District Munsif-cum-Judicial Magistrate, Eraniel.

2.The petitioner herein is the respondent in MC No.17 of 2017 on the file of the District Munsif-cum-Judicial Magistrate, Eraniel. The petitioner's parents filed the above maintenance case under Section 125 of the Code of Criminal Procedure seeking a sum of Rs.5,000/- each and they have claimed in their maintenance petition that their children failed to maintain them in spite of executing a settlement deed in favour of their children and the petitioner is having three brothers and they also got property from their parents and since the petitioner is working as Constable in CISF Unit at BPCL, his parents chosen to file the above maintenance case.

3.The petitioner herein filed a counter opposing the prayer sought for by the respondents herein. The learned District Munsif-cum-Judicial Magistrate, Eraniel, after hearing both sides, has dismissed the 311 Cr.P.C petition on 30.04.2018 on the ground that when the petitioner is ready to maintain the parents, there is no need for cross examination and since the maintenance petition is pending for three years, the said petition was dismissed. Aggrieved by the order of the trial court, the petitioner is before this court.

4.The learned counsel appearing for the petitioner submitted that the learned trial Judge is not justified in dismissing the 311 petition by citing 3 years pendency of the case as a reason and the learned Judge ought to have permitted the petitioner to recall PW1



for cross examination as the petition to recall was filed within 5 days from the date of closing the evidence of PW1 and that the learned Judge failed to see that the maintenance petition has filed only against the petitioner leaving three other sons, who have also received property from the respondents and unless the petition is allowed to cross examine PW1, he could not demonstrate the reason for non-inclusion of other brothers of the petitioner. In view of the above circumstances, the impugned order has to be set aside and the criminal revision has to be allowed.

5. On the other hand, the learned counsel appearing for the respondents submitted that the trial court after analysing the documents has passed the order, which does not require any interference by this court and prays for dismissal of the revision.

6. Heard both sides and perused the materials available on record.

7. In this case, the petitioner is the son of the respondents. The respondents filed petition under Section 125 of the Criminal Procedure Code. The first respondent was examined as PW1. On perusal of the lower court order, it reveals that even after giving sufficient time, this petitioner was not in a position to cross examine PW1. Hence, the trial court rightly closed the petitioner's side evidence and posted the case for respondents side evidence.

8. The petitioner filed a petition under Section 311 to recall PW1 for cross examination. This petitioner filed a counter in the main petition. On perusal of the counter filed by this petitioner, he has stated that he is ready to maintain his parents. Further, the respondents are the senior citizens. It is needless to say that it is the bounden duty of the sons to take care of the parents. In this case, already the petitioner admitted his liability to take care of his parents. Hence, it is not necessary for this petitioner to cross examine PW1. The reasons stated in the petition filed by the petitioner are not acceptable. Hence, in the interest of justice, the criminal revision is liable to be dismissed, confirming the order of the trial court.

9. In the result, this criminal revision is **dismissed**. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar (CS)



To,

The District Munsif-cum-Judicial Magistrate,
Eraniel.

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+1 CC to Mr.V.VISHNU, Advocate (SR-76780[F] dated 23/07/2019)
+1 CC to Mr.D.SRINIVASARAGAVAN, Advocate (SR-76816[F] dated
23/07/2019)

Crl.RC(MD)No.378 of 2019
22.07.2019

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