



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Date of Reservation</i>	<i>25.06.2019</i>
<i>Date of Order</i>	<i>20.09.2019</i>

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

CrI.R.C(MD)No.384 of 2019

and

CrI.MP(MD)No.5682 of 2019

T.Sri Skantharaja : Revision Petitioner/ Petitioner/Respondent
Vs.

Kala : Respondent/Respondent/Petitioner

Prayer: Criminal Revision has been filed under Sections 397 and 401 of Criminal Procedure Code, against the order passed in Cr.M.P.No.55 of 2017 in MC No.136 of 2015, dated 28.03.2017 on the file of the Family Court, Tiruchirappalli.

For Revision Petitioner : Mr.K.Baalasundram
For Respondent : Mr.S.Micheal Helder

O R D E R

This Criminal Revision is directed against the order passed in Cr.M.P.No.55 of 2017 in MC No.136 of 2015, dated 28.03.2017 on the file of the Family Court, Tiruchirappalli.

2.The respondent herein is the wife of one Dharmaraj. The petitioner helped the respondent for the purpose of celebration of her daughter's marriage and thereafter, the respondent is friendly relationship with the petitioner. Taking advantage of the help rendered by the petitioner and also the friendly relationship, she assumed otherwise demanded money from the petitioner. The respondent without any basis filed Maintenance Petition before the Family Court, Tiruchirappalli, under Section 125 of the Code of Criminal Procedure, in M.C.No.136 of 2015. Due to illness in his brain, the petitioner was unable to appear before the Family Court, Tiruchirappalli and hence, he was set ex-parte on 22.12.2016. On coming to know the same, the petitioner filed a petition in Cr.M.P.No.55 of 2017 to set aside the ex-parte order, which was dismissed for default, on 28.03.2017. Aggrieved by the said order, the petitioner is before this Court.



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

4.The learned counsel appearing for the petitioner argued that on 17.02.2017, the petitioner has gone to Chennai to undergo a surgery and hence, it is not possible for him to file counter in the case and due to non-filing of the counter, the petitioner was called absent and set ex-parte and prays that the ex-parte order passed against him has to be set aside and the criminal revision has to be allowed.

5.The learned counsel appearing for the petitioner further argued that the respondent/petitioner is not his wife and it has to be contested only on merits and the respondent/petitioner has no right to claim maintenance and reasonable opportunity is to be given to him to contest the case on merits.

6.In this case, the respondent/petitioner states that the petitioner/respondent is her husband. But the petitioner/respondent stated that the respondent/petitioner is not his wife. Further, the petitioner/respondent stated only due to his ill-health, it is not possible for him to attend the court and file his counter.

7.No contra evidence was let in on the side of the respondent/petitioner to the effect that her husband is heal and health during March 2017.

8.In this case, the petitioner denied that the respondent/petitioner is not his wife. Hence, under these circumstances, it is necessary to give reasonable opportunity to the petitioner to contest the case. The reasons stated in the petition are acceptable. Hence, in the interest of justice, the impugned order is liable to be set aside.

9.In the result, this criminal revision is allowed. The impugned order passed by the trial court is set aside. The trial court is directed to take up the MC No.136 of 2015 and dispose of the same, on merits and in accordance with law, after giving opportunity to the parties concerned, within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

Sub Assistant Registrar(CS)



To

The Judge,
Family Court,
Tiruchirappalli.

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+1 CC to Mr.K.BAALASUNDHARAM, Advocate (SR-89011[F] dated
24/09/2019)

Crl.RC (MD) No.384 of 2019
20.09.2019

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