



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.04.2019

CORAM:

THE HONOURABLE **MR. JUSTICE N. SESHASAYEE**

Crl.O.P.(MD)No.13524 of 2018

and

Crl.M.P.(MD).No.6092 of 2018

P.Chinnasamy ... Petitioner/Petitioner/Respondent

/Vs./

P.Muthumalai ...Respondent/Respondent/Petitioner

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C to set aside the order passed by the learned Principal District cum Sessions Court, Srivilliputhur, Virudhunagar District in Cr.R.P.No.5 of 2015, dated 28.04.2018 by confirming the order passed in M.C.No.5 of 2013, dated 28.11.2014 on the file of the learned Chief Judicial Magistrate, Srivilliputhur.

For Petitioner	: Mr.K.Seemaraj
For Respondent	: Mr.A.Sivaji

ORDER

The present petition is filed by the husband of the respondent challenging the order of maintenance passed by the learned Chief Judicial Magistrate, Srivilliputhur, in M.C.No.5 of 2013, dated 28.11.2014 and confirmed by the Principal District cum Sessions Court, Srivilliputhur, Virudhunagar District in Cr.R.P.No.5 of 2015, dated 28.04.2018.

2. Heard the learned counsel appearing for the petitioner and the learned and the learned counsel appearing for the respondent.

3. The marriage between the parties is admitted. However, the allegation of the petitioner is that the respondent has deserted him without any lawful reason and as a result, he was constrained to file H.M.O.P.No.21 of 1995 for dissolution of the marriage before the Sub Court, Srivilliputtur. The respondent on her part has moved a petition in Maintenance Case seeking maintenance.

4. The one point argument of the learned counsel appearing for the petitioner is that during the pendency of both the proceedings, the parties have entered into an agreement to have the marriage dissolved, and had the same registered before the Sub-Registrar. Pursuant to the said agreement, the petitioner is said to have paid a sum of Rs.60,000/- to the respondent and to his child as permanent alimony.



5. However, after about a decade since this development, the respondent has again come forward with a petition in M.C.No.5 of 2013 for maintenance before the trial Court. During enquiry, the petitioner did not choose to adduce any evidence whatsoever, more particularly his own financial capacity or such facts as may go to prove that the respondent is capable of maintaining herself. The trial Court accordingly has allowed the petition and directed the petitioner to pay Rs.10,000/- in all as maintenance for the respondent and her child. Aggrieved by the same, the petitioner approached the Principal District cum Sessions Court, Srivilliputhur, Virudhunagar District in revision.

6. Dealing with the point now raised by the learned counsel appearing for the petitioner, the revisional Court has held that inasmuch as the marriage between the petitioner and the respondent was not dissolved in the manner known to law., the marriage cannot be said to have been extinguished and accordingly confirmed the judgment of the trial Court.

7. Argument of the learned counsel appearing for the petitioner which is already stated above is no different than one that was placed before the Courts below. For the very reason on the basis of which this argument was rejected by the Courts below, this Court too chooses to reject it. It has to be recorded additionally that the petitioner has faulted twice (a) in not opting for the legal means for dissolving the marriage when the same is available under the Hindu Marriage Act, 1955. (b) for not even caring to adduce contra evidence in the present proceedings.

8. Considering the only one aspect on the validity of the marriage now argued, this Court can do nothing different except to confirm the finding as mentioned above. There is no merit in this petition. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Principal District cum Sessions Court,
Srivilliputhur, Virudhunagar District.



2.The Chief Judicial Magistrate, Srivilliputhur.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.A.Sivaji,Advocate, SR.No.59423

+1cc to M/s.K.Seemaraj ,Advocate, SR.No.59325

Cr1.O.P. (MD) No.13524 of 2018
05.04.2019

SP/27.04.2019/ 3P/4C