



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **23.09.2019**

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P(MD)No.12145 of 2019

and

CrI.M.P(MD)No.7330 of 2019

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Karuppasamy

... Petitioner

Vs.

1.Sasikala

2.Minor Balamurugan

3.Minor Lavanya

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to set aside the order passed by the Additional District and Sessions Court, Virudhunagar in Cr.R.P.No.8 of 2018, dated 22.03.2019, confirming the order passed by the learned Judicial Magistrate, Aruppukottai in Cr.M.P.No.5395 of 2018, dated 03.11.2018.

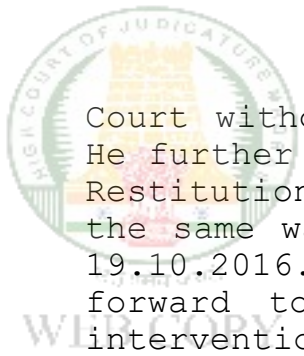
For Petitioner : Mr.A.K.Manickam

For Respondents : Mr.M.Senthil Ayyanar

O R D E R

This petition has been filed challenging the order passed by the Additional District and Sessions Court, Virudhunagar in Cr.R.P.No.8 of 2018, dated 22.03.2019, confirming the order passed by the learned Judicial Magistrate, Aruppukottai in Cr.M.P.No.5396 of 2018, dated 03.11.2018, thereby, directed maintenance of Rs.9,000/- to the respondents being wife and two minor children.

2. The learned counsel for the petitioner submitted that the petitioner is a husband. He got married to the first respondent on 02.11.2008 and due to the wedlock, they gave birth to second and third respondents herein. Due to misunderstanding between them, they got separated in the year 2011. Immediately, she filed a maintenance petition in M.C.No.32 of 2015 and an ex-parte decree was passed as against the petitioner on 21.10.2016. Thereby, ordered maintenance of a sum of Rs.4,000/- to the first respondent and Rs.2,500/- each to the second and third respondents herein. He immediately filed a petition to set aside the ex-parte order along with condone delay petition. The condone delay petition filed in Cr.M.P.No.5396 of 2018 for the reasons that he was suffering from Jaundice and he could not contact his counsel. The said petition was dismissed without considering the reasons in the condone delay petition and the same was also confirmed by the first Appellate



Court without considering the facts and circumstances of the case. He further submitted that subsequently, he also filed a petition for Restitution of Conjugal Rights as against the first respondent and the same was also allowed in H.M.O.P.No.124 of 2015 by order dated 19.10.2016. Even thereafter, the first respondent did not come forward to live with the petitioner. Therefore, he sought for intervention of the orders of the Court below.

3. The learned counsel for the respondents would submit that immediately after giving birth to the children, the first respondent was driven out from the matrimonial home. She does not have any job and as such it was very difficult to maintain the two children. Therefore, she was constrained to file a maintenance case in M.C.No.32 of 2015. The petitioner was appeared and also filed a counter affidavit. In fact, he also cross examined the first respondent. But the trial Court passed orders after considering all the facts and circumstances of the case and awarded maintenance of a sum of Rs.4,000/- to the first respondent and Rs.2,500/- each to other respondents 2 and 3 herein. Therefore, with the delay of 697 days the petitioner filed a petition to set aside the ex-parte order and the same was rightly dismissed by the trial Court. It was also confirmed by the first Appellate Court. He further submitted that the present petition amounts to second revision, which is not at all maintainable.

4. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

5. The present petition has been filed challenging the order passed in the condone delay petition and the same was confirmed by the first Appellate Court. The first respondent being the wife of the petitioner herein filed a maintenance case in M.C.No.32 of 2015. In which, the petitioner appeared and also filed a counter. He also cross examined the first respondent and thereafter, appeared before the trial Court. Thereafter, the trial Court passed order of maintenance a sum of Rs.4,000/- to the first respondent and Rs.2,500/- each to the second and third respondent herein, who are being the children. Though the petitioner obtained a decree of Restitution of Conjugal Rights, he did not take any steps to reunion with first respondent. That apart, the amount awarded by the trial Court is very meagre amount. Though it is an ex-parte award, the petitioner has absolutely no case to defend before the lower Court and as such, though the condone delay petition is allowed, no purpose will be served.

6. Considering the above facts and circumstances of the case, this Court find no irregularity and infirmity in the order passed by the Courts below.



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7. In the result, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate,
Aruppukottai.

2.The Additional District and Sessions Court,
Virudhunagar.

+1 CC to Mr.M.SENTHIL AYYANAR, Advocate (SR-88996[F] dated 24/09/2019)

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vsd

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