



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No. 2129 of 2018

and

CrI.M.P.(MD) No. 946 of 2018

P. Bakkir Mohammed

... Petitioner

Vs

1. Shibabanu

2. Minor Thashiba

3. Minor Aljameer

... Respondents

(Minor respondents-2 & 3 are represented through their mother)

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to set aside the order passed by the District Munsif cum Judicial Magistrate, Vadipatti, Madurai District in Cr.M.P.No.5330 of 2015 in M.C.No.3 of 2012 by his order dated 10.10.2015 which was subsequently confirmed by the Learned Additional District & Sessions Judge-V, Madurai, Madurai District in CrI.R.C.P.No.4 of 2016 vide his order dated 20.10.2016.

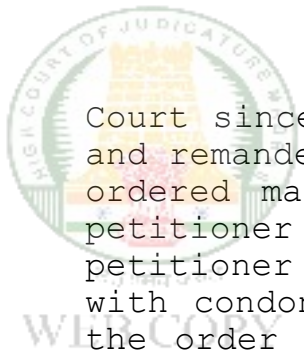
For Petitioner : Mr.M. Pitchaimuthu

For Respondents : Mrs.A.S. Sangeetha

O R D E R

This petition has been filed challenging the order, dated 10.10.2015 passed by the learned District Munsif cum Judicial Magistrate, Vadipatti, Madurai District in CrI.M.P.No.5330 of 2015 in M.C.No.3 of 2012 thereby allowing the set aside petition on condition that the petitioner shall pay a sum of Rs.1 lakh to the respondent and the same was confirmed by order, dated 20.10.2016 passed by the Learned Additional District & Sessions Judge-V, Madurai, Madurai District in CrI.R.P No.4 of 2016.

2. The learned counsel appearing for the petitioner would submit that he is the husband of the first respondent and their marriage was solemnized on 27.01.1999 as per Muslim Rights and after their wedlock they got birth two children. Due to matrimonial disputes, they living separately. In the meantime, the first respondent/wife has filed a petition under Section 125 of Cr.P.C., for maintenance. The petitioner was not appear before the trial



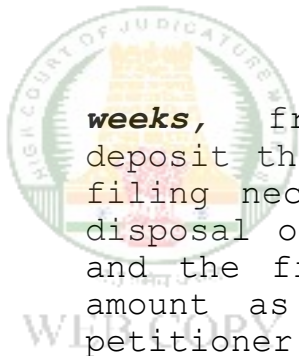
Court since a criminal complaint was lodged by the first respondent and remanded to judicial custody. Therefore, he was set exparte and ordered maintenance of Rs.30,000/-per month to be payable by the petitioner to the respondents by order, dated 16.11.2012. The petitioner has filed a petition to set aside the exparte order along with condone delay petition and the same was allowed and set aside the order on condition that the petitioner shall deposit a sum of Rs.1 lakh to the credit of M.C. No.3 of 2012 as part amount of a sum of Rs. 9 lakhs payable by the petitioner to the respondents. As against which, the petitioner has preferred a petition the same was also dismissed by order, dated 20.10.2016 with cost of Rs.2500/-. He would further submit that he is ready to deposit a sum of Rs. 2 lakhs as directed by the trial Court.

3. The learned counsel appearing for the respondents would submit that immediately after the birth of respondents-2 & 3 due to dowry demand the first respondent left from the matrimonial home. The petitioner is working as a Head Constable and he never appear before the trial Court in M.C. No.3 of 2012 and as such the learned Magistrate rightly ordered maintenance Rs.30,000/-payable by the petitioner to the respondents. He wantonly absent before the trial Court and as such he was set exparte. While allowing the set aside petition filed by the petitioner, the trial Court imposed condition that the petitioner shall deposit a sum of Rs.1 lakh to the credit of maintenance case in M.C. No.3 of 2012. The petitioner has not complied the conditions imposed by the trial Court . She would further submit that the first respondent has received a sum of Rs.9,708/- per month from the salary of the petitioner as maintenance.

4. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents.

5. The petitioner is husband and he got married with the first respondent on 27.01.2019 and gave birth two children. Due to dowry demand, the first respondent left from matrimonial home and she has filed a maintenance case in M.C. No.3 of 2012 for maintenance in which the petitioner was set exparte. Setting aside the exparte decree, the trial Court imposed condition that the petitioner shall deposit a sum of Rs.1 lakh to the credit of M.C. No.3 of 2012. The petitioner has preferred a appeal the was also dismissed with costs.

6. Considering the facts and circumstances of the case, this Court set aside the order, dated 10.10.2015 passed by the learned District Munsif cum Judicial Magistrate, Vadipatti, Madurai District in Cr.M.P.No.5330 of 2015 in M.C.No.3 of 2012 the same was confirmed by order dated 20.10.2016 by the Learned Additional District & Sessions Judge-V, Madurai, Madurai District in Crl.R.C.P.No.4 of 2016 on condition that the petitioner shall deposit a sum of Rs. 2 lakhs to the credit of M.C. No.3 of 2012, within a period of **Two (2)**



weeks, from the date of receipt of copy of the order. On such deposit the first respondent is permitted to withdraw the same on filing necessary petition. It is also made clear that till the disposal of the main case, the attachment of salary shall continue and the first respondent is permitted to receive the maintenance amount as awarded by the trial Court from the salary of the petitioner as interim maintenance. The trial Court is also directed to complete the entire trial proceedings within **Four (4) months** from the date of receipt of copy of the order.

7. With the above observations, the Criminal Original Petition is disposed of. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar

To

1. The District Munsif-cum-Judicial Magistrate,
Vadipatti, Madurai District.
2. The V Additional District and Sessions Judge,
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.S. SHANGEETHA, Advocate (SR-90340[F] dated
30/09/2019)

Order made in

CRL.O.P (MD) No. 2129 of 2018

27.09.2019

KSA

MS/01.10.2019/3P.5C