



Cr1.O.P. (MD) Nos.8233 and 8234 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.08.2019

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THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

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Cr1.O.P. (MD) Nos.8233 and 8234 of 2014

1.Rajalakshmi

2.Minor Neetheswara ... Petitioners/Respondents
in both Cr1.O.Ps.

(Minor 2nd petitioner through his
mother and natural guardian
1st petitioner)

Vs.

R.Thiyagarajan ... Respondent/Petitioner
in both Cr1.O.Ps.

COMMON PRAYER: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the records in Cr.R.P.Nos.31 and 32 of 2012, respectively, on the file of the learned Principal Sessions Judge, Virudhunagar District at Srivilliputtur and set aside the order dated 26.09.2013 and allow Cr.R.P.Nos.31 and 32 of 2012, respectively.
(in both Cr1.O.Ps.)

For Petitioners : Mr.P.Subbaraj

For Respondent : Mr.C.Jeganathan

C O M M O N O R D E R

The petitioners herein filed M.C.No.31 of 2007, before the learned Chief Judicial Magistrate, Srivilliputur under Section 125 of Cr.P.C., claiming maintenance from the respondent namely., Thiyagarajan. By order dated 07.09.2012, the learned Chief Judicial Magistrate directed the respondent herein to pay a sum of Rs.600/- as maintenance to the first petitioner herein. However, the maintenance claim regarding the second petitioner namely., Minor Neetheswaran was dismissed. Aggrieved by the grant of maintenance in favour of Rajalakshmi/first petitioner, the Thiyagarajan/respondent herein filed Cr.R.P.No.31 of 2012 before the learned Principal Sessions Court, Srivilliputur. Aggrieved by the dismissal of the maintenance claim, Minor Neetheswaran and seeking enhancement of the quantum of maintenance awarded in favour of Rajalakshmi, Cr.R.P.No.32 of 2012 came to be filed. While the



respondent's criminal revision petition was allowed, the petitioners' criminal revision petition was dismissed by a common order dated 26.03.2013. Aggrieved by the same, these criminal original petitions have been filed.

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2. Heard the learned counsel on either side.

3. From the reading of the materials available on records one can see that the first petitioner namely., Rajalakshmi filed a rape complaint against the brother of the respondent namely., Thiyagarajan. The said case was taken up for trial in S.C.No.129 of 1996 on the file of the learned Assistant Sessions Judge, Srivilliputur. By judgment dated 15.04.1999, Seeniraj, the elder brother of Thiyagarajan was acquitted. Challenging the same, the first petitioner herein filed CrI.R.C.No.557 of 1999 before the Madras High Court. The said criminal revision case suffered dismissal on 21.01.2002.

4. It is thus obvious that the grievance of the first petitioner was only against Seeniraj, the elder brother of the respondent. But then, Seeniraj was employed in Bangalore. It was the respondent who was residing in the village of Koomapatti. Therefore, the villagers joined together and put pressure on the respondent herein and made him to tie thalai on the first petitioner herein. This appears to have taken place on 24.07.2002. The second petitioner herein namely., Minor Neetheswaran was born on 05.12.2002. But within a period of five months from the date of the so called marriage, the second petitioner was born. The respondent challenged the very paternity even before the Trial Magistrate in paragraph 12 of his counter. The respondent had stated that no point time he ever had any physical relationship with the first petitioner herein. In these circumstances, it was the duty of the first petitioner to have proved the paternity of the second petitioner as attributable to the respondent herein. No such reports was taken. That is why, the learned Trial Magistrate rightly held that the respondent/Thiyagarajan was not obliged to pay any maintenance to the second petitioner namely., Minor Neetheswaran. The said finding of the Trial Magistrate was duly confirmed by the learned Sessions Judge also.

5. It is well settled that challenging an order passed by the Magistrate under Section 125 of Cr.P.C., the aggrieved party will have the right of revision. The Sessions Court as well the High Court have concurrent jurisdiction. Therefore, it was open to the petitioners to move the Sessions Court or this Court. Having moved the Sessions Court, a second revision is barred in terms of Section 397(3) of Cr.P.C. The said statutory bar cannot be casually overcome by invoking the inherent jurisdiction of this Court under Section 482 of Cr.P.C. Of course, the inherent powers of this Court cannot be ousted but then, they can be exercised in exceptional



situations only. In this case, the petitioners have not made out such a case. A mere look at the sequence of events would indicate that the first petitioner unable to get at the elder brother of the respondent has chosen to victimize the respondent. Therefore, the learned Sessions Judge/Revisional Court rightly allowed the respondent's criminal revision petition and dismissed the petitioners' criminal revision petition. I find no ground to interfere and these criminal original petitions are dismissed.

Sd/-

Assistant Registrar writes

// True Copy //

Sub Assistant Registrar(CS)

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To

The Principal Sessions Judge,
Srivilliputtur,
Virudhunagar District.

+1 CC to M/s.C. JEGANATHAN, Advocate (SR-82992[F] dated 22/08/2019)

+2 CC to M/s.VEERA ASSOCIATES, Advocate (SR-83377,83378[F] dated 26/08/2019)

+1 CC to M/s.P. SUBBARAJ, Advocate (SR-83443[F] dated 27/08/2019)

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