

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.01.2020

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.25008 of 2012
and
M.P Nos.1 and 2 of 2012

Suresh Babu

... Petitioner

Vs.

1.Lavanya

2.Minor Tejaswin

Minor rep. By the mother

1st respondent.

... Respondents

Prayer:

Petition filed under Section 482 of Cr.P.C., seeking to call for the records in Crl.R.C No.21 of 2010 dated 21.7.2012 on the file of the Principal District Judge, Krishnagiri in confirming and modifying the orders of the learned Judicial Magistrate, Denkanikottai dated 22.12.2009 made in M.C.No.7 of 2007 and quash the same.

For Petitioner : Mr.G.Jeremiah

For Respondents : Mr.E.P.Senniyangiri

O R D E R

This Criminal Original Petition has been filed seeking to call for the records in Crl.R.C No.21 of 2010 dated 21.7.2012 on the file of the Principal District Judge, Krishnagiri in confirming and modifying the orders of the learned Judicial Magistrate, Denkanikottai dated 22.12.2009 made in M.C.No.7 of 2007 and quash the same.

2.The learned counsel appearing for the petitioner would submit that the respondents are wife and son of the petitioner herein. The respondents have filed a maintenance case in M.C No.7 of 2007 before the Judicial Magistrate, Denkanikottai, seeking maintenance amount of Rs.4000/- and the same was ordered by the trial Court. Aggrieved by the said order, the petitioner has filed a petition in Crl.R.C.21 of 2010 before the Principal District Judge, Krishnagiri and the lower appellate Court modified the trial Court's order, against which the present petition is filed. Accordingly, he prays to allow this petition.

3. Heard the learned counsel appearing for the respondents.

4. The issues involved in this case is whether the petition filed under Section 482 Cr.P.C., is maintainable in view of bar under Section 397(3) Cr.P.C?

5. As per Section 397(3) Cr.P.C., if an application under this Section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them. In this context, it is relevant to extract below Section 397(1) and (3) Cr.P.C.

"397. Calling for records to exercise powers of revision -
(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation - All Magistrates, whether Executive or Judicial, and whether exercising original or appellants jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them".

Accordingly, the petitioner filed a revision before the Principal District Judge, Krishnagiri and the same was taken on file and the lower appellate Court partly confirmed and modified the order of maintenance passed by the learned Judicial Magistrate, Denkanikottai.

6. In view of bar under Section 397(3) Cr.P.C., further revision is not permissible and the same cannot be entertained by any forum. The said position was also discussed by the Hon'ble Apex Court in the case of Krishnan v. Krishnaveni reported in (1997) 4 SCC 241, wherein the Apex Court has clearly held that in view of the prohibition under Section 397(3) Cr.P.C., the complainant or the accused cannot be allowed to take recourse to a second revision, but the High Court can entertain a petition under Section 482 Cr.P.C. When there is serious miscarriage of justice and abuse of process of the Court

or when mandatory provisions of law are not complied with and when the High Court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional Court.

7. It is true that in the above said decision, the Hon'ble Apex Court has clearly held that in view of the prohibition under Section 397(3) Cr.P.C., the complainant or the accused cannot be allowed to take recourse to a second revision, however, has further held that the said provision is not an absolute bar and the High Court can entertain a petition under Section 482 Cr.P.C. when there is serious miscarriage of justice and abuse of process of the Court or when mandatory provisions of law are not complied with. If the High Court feels that the inherent jurisdiction is to be exercised there is grave miscarriage of justice, abuse of process of Court or the order of the trial Court as well as the lower appellate Court is a perverse or incorrigible one.

8. However, in the case on hand, the petitioner is not able to demonstrate that there is serious miscarriage of justice and abuse of process of the Court and that the mandatory provisions of law are not complied with. In such circumstances, the petitioner cannot be allowed to take recourse to second revision.

9. In view of the above discussions and decisions cited supra, this Court is not inclined to interfere with the impugned order passed by the Court below. Accordingly, the Criminal Original petition filed under Section 482 Cr.P.C is dismissed and the order dated 21.07.2012 passed in CrI.R.C. No.21 of 2010 by the learned Principal District Judge, Krishnagiri in partly confirming and modifying the order dated 22.12.2009 passed in M.C.No.7 of 2007, by the learned Judicial Magistrate, Denkanikottai is confirmed. Consequently, connected miscellaneous petitions, if any, are closed.

सत्यमेव जयते

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

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To

1. The District Judge,
Krishnagiri

2. The learned Judicial Magistrate,
Denkanikottai.

3.The Chief Judicial Magistrate,
Dharmapuri.

+1cc to Mr.E.P.Senniyangiri, Advocate, S.R.No. 3119

Crl.O.P.No.25008 of 2012
and M.P Nos.1 & 2 of 2012

GJ(CO)
GN(26/02/2020)



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