

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2020

CORAM

THE HON'BLE Mr. JUSTICE P.N. PRAKASH

CrI.O.P.No.4607 of 2015
and M.P.No.1 of 2015

Saravanan

... Petitioner

Vs.

Bhanumathy

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.R.P.No.1 of 2014 on the file of the Additional District Judge, Salem, set aside the order dated 08.07.2014 confirming the order dated 03.10.2012 in M.C.No.7 of 2010 on the file of the Judicial Metropolitan Magistrate Court No.VI, Salem, set aside the same.

For Petitioner : Mr.Asokan

For Respondent : Ms.Vrindha Ramesh
Legal Aid Counsel

ORDER

This case is taken up through video conferencing.

2. For the sake of convenience, the petitioner and the respondent will be referred to by their names.

3. Bhanumathy, the mother of Saravanan initiated proceedings in M.C.No.7 of 2010 before the Judicial Magistrate Court No.VI, Salem, under Section 125 Cr.P.C., for maintenance. The matter was contested by her son Saravanan. Bhanumathy examined herself as PW-1 and marked Exs.P1 and P2. Saravanan examined himself as RW-1 and marked Exs.R1 to R19. After considering the evidence on record, the Trial Court vide order dated 03.10.2012, directed Saravanan to pay maintenance of Rs.5,000/- to his mother Bhanumathy. Challenging the order, Saravanan preferred

C.R.P.No.1 of 2014 under Section 397 Cr.P.C. in the Court of Session, which was heard by the II Additional Sessions Judge, Salem and the petition was dismissed, confirming the order passed by the Judicial Magistrate. Challenging the concurrent findings of the two Courts below, Saravanan has filed the present petition under Section 482 Cr.P.C.

4. Notice was served on Bhanumathy but since she did not have the means to engage a counsel, Ms.Vrindha Ramesh was nominated by the High Court Legal Services Committee to represent Bhanumathy.

5. Heard Mr.Asokan, learned counsel for Saravanan and Ms.Vrindha Ramesh, learned counsel appearing for Bhanumathy.

6. In the opinion of this Court, this petition under Section 482 Cr.P.C. is not maintainable. The High Court and the Sessions Court have concurrent powers under Section 397 Cr.P.C. If a person elects to approach the Sessions Court, he will be precluded from approaching the High Court later in view of the bar under Section 397(3) Cr.P.C. To overcome the bar, resort to Section 482 Cr.P.C. cannot be made. Ofcourse, where there is a manifest illegality committed by the two Courts below, the power under Section 482 Cr.P.C. is available. In this case, this Court does not find any illegality in the orders passed by the two Courts below. The mother - son relationship between Bhanumathy and Saravanan is not disputed, only the quantum of maintenance is challenged. This is a question of fact which has been gone into by the two Courts below. Hence, this Criminal Original Petition is dismissed as not maintainable. Connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS III)

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Sub Asst. Registrar

sni

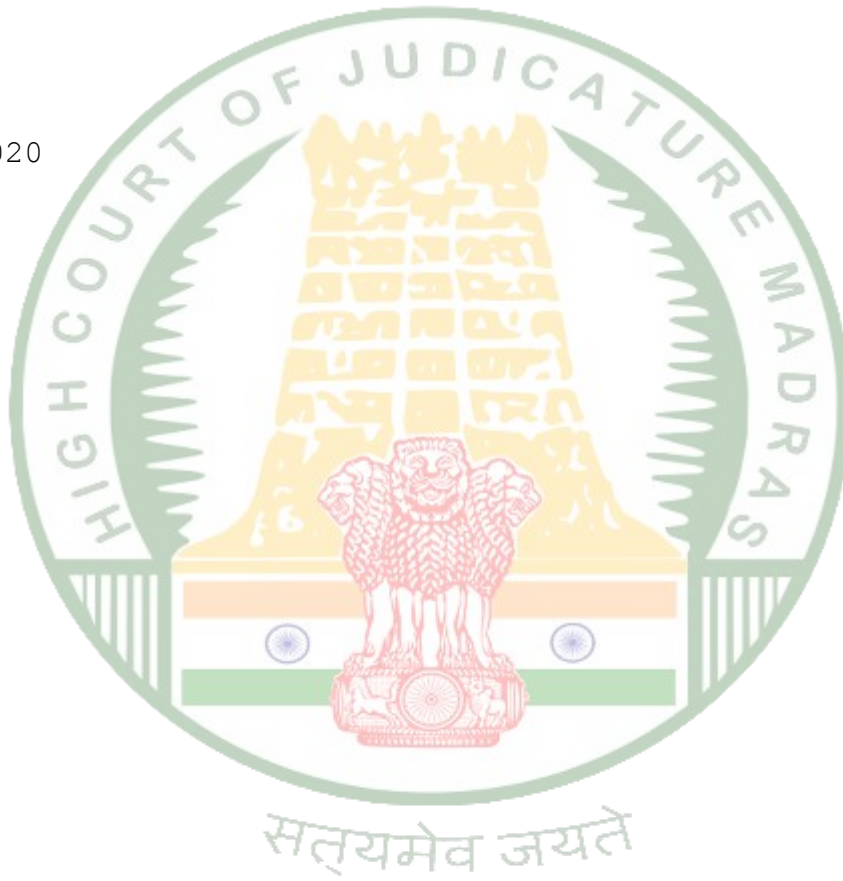
To

1.Judicial Metropolitan Magistrate Court No.VI,
Salem.

2.II Additional Sessions Judge,
Salem.

Cr1.O.P.No.4607 of 2015

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