

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.R.C.No.1387 of 2016
and Crl.M.P.No.12183 of 2016

Anitha .. Petitioner

Vs.

Samsundar .. Respondent

Prayer: Criminal Revision Petition filed under Section 397 read with 401 of the Code of Criminal Procedure to call for the records on the file of the learned I Additional District and Sessions Judge, Vellore, Vellore District, in Crl.R.P.No.28 of 2011 dated 04.08.2016 and set aside the judgment passed by the learned Chief Judicial Magistrate, Vellore, Vellore District, in M.C.No.23 of 2009 dated 09.06.2011.

For Petitioner : Mr.N.Sudharsan

For Respondent : Mr.S.Krishnasamy

ORDER

Seeking to set aside the order of remand dated 04.08.2016 passed by the I Additional District and Sessions Judge, Vellore, in Crl.R.P.No.28 of 2011, while setting aside the order of maintenance of a sum of Rs.5,000/- granted to her in the petition filed under Section 125 of the Code of Criminal Procedure (CrPC), by the learned Chief Judicial Magistrate, Vellore, in M.C.No.23 of 2009 on 09.06.2011, the petitioner/wife has filed this revision.

2. The case of the petitioner/wife is as follows :

2.1. The petitioner married the respondent on 05.09.2007 as per Christian rites and since it is a love marriage, her parents did not arrange it. However, after the marriage, her parents reconciled with her and offered seedhana and other gifts. In spite of the same, the respondent/husband and her parents harassed her and demanded more dowry. Unable to withstand the harassment and ill-treatment at their hands, she left the matrimonial home and lodged a complaint with the All Women Police Station and a case in Crime No.5 of 2008 was registered.

2.2. In the meanwhile, the respondent/husband filed IDOP No.36 of 2008 seeking divorce making untenable allegations.

2.3. In such backdrop, she filed M.C.No.23 of 2009 on the file of the Chief Judicial Magistrate Court, Vellore, seeking maintenance under Section 125 CrPC, which was allowed and the respondent was directed to pay a sum of Rs.5,000/- per month as maintenance, to the petitioner.

2.4. The respondent/husband questioned the said order and the revision court, viz., I Additional District and Sessions Court, Vellore, vide the order dated 04.08.2016, set aside the order of maintenance passed in her favour and remanded the matter to the trial court with a direction to transfer M.C.No.23 of 2009 to the jurisdictional Magistrate Court at Walajah, for fresh adjudication and disposal.

2.5. The petitioner has now questioned the said order in this revision.

3. Learned counsel for the petitioner submitted that the petitioner, due to distress, on account of the unsuccessful love marriage, was staying in her relative's place at Vellore and filed the maintenance case, which was rightly ordered by the trial Court. But the revisional court, without appreciating the said contention, erroneously, set aside the said order and while remanding the matter, directed the trial court to transfer the case to the jurisdictional Magistrate Court. It is further contended that since the petitioner has no source of income, she finds it difficult to maintain herself and thus, prays for setting aside the impugned order and to restore the order of the trial Court.

4. Learned counsel for the respondent contended that the petitioner is a woman of easy virtue and it is she, who caused mental agony to the respondent and his parents by her acts and deeds ; since she cheated the respondent and caused mental agony, the respondent filed a petition in IDOP No.36 of 2008 for divorce before the Principal District Court, Vellore, and the same was allowed ex-parte on 23.10.2008 ; and the petitioner filed I.A.No.41 of 2009 seeking to set aside the said ex-parte award, which was ordered. Learned counsel also submitted that the respondent lost his job, but for the acts of the petitioner and he has also no means to maintain himself. It is also contended that the petitioner deliberately gave a wrong address to maintain the maintenance case before the trial court, in spite of the fact that her claim is only within the jurisdiction of the Judicial Magistrate Court, Wallajah, and thus, the revision court rightly remanded the matter to the trial court for transfer to the jurisdiction court.

5. Heard both sides and perused the materials available on record.

6. At the outset, it is to be stated that the revision court, while setting aside the order of maintenance and remanding the matter back, has held that the petitioner suffered an ex-parte divorce decree on 23.10.2008 and she filed an application to set aside the same in I.A.No.41 of 2009 giving her residential address at Walajah Town and hence, the trial court at Vellore has no jurisdiction to entertain the maintenance case. This Court is of the view that such an order, which was passed as early as on 04.08.2016, shall not be interfered with now, that too, without there being any infirmity in the said finding.

7. On the other hand, to meet the ends of justice, it would suffice to direct the jurisdictional Magistrate to take up the matter and dispose of the same as expeditiously as possible, as it is claimed by the learned counsel for the petitioner that though the order of maintenance was passed as early as on 09.06.2011, no amount was paid by the respondent till date.

8. In fine, this revision is dismissed being devoid of merits and the order dated 04.08.2016 passed by the learned I Additional District and Sessions Judge, Vellore, Vellore District, in Crl.R.P.No.28 of 2011 is upheld. The learned Chief Judicial Magistrate, Vellore, shall transmit the entire records pertaining to M.C.No.23 of 2009 to the file of the jurisdictional Judicial Magistrate at Wallajah, within a period of two weeks from the date of receipt of a copy of this order, if not transferred earlier, and the said Magistrate shall take up the maintenance case and proceed with the same on a day-to-day basis and pass orders on merits and in accordance with law, after affording due opportunity of hearing to both the parties, within a period of four weeks from the date of receipt of the records from the Chief Judicial Magistrate Court, Vellore. Consequently, Crl.M.P.No.12183 of 2016 is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

To

1. The I Additional District and Sessions Judge,
Vellore, Vellore District.

2. The Chief Judicial Magistrate, Vellore.

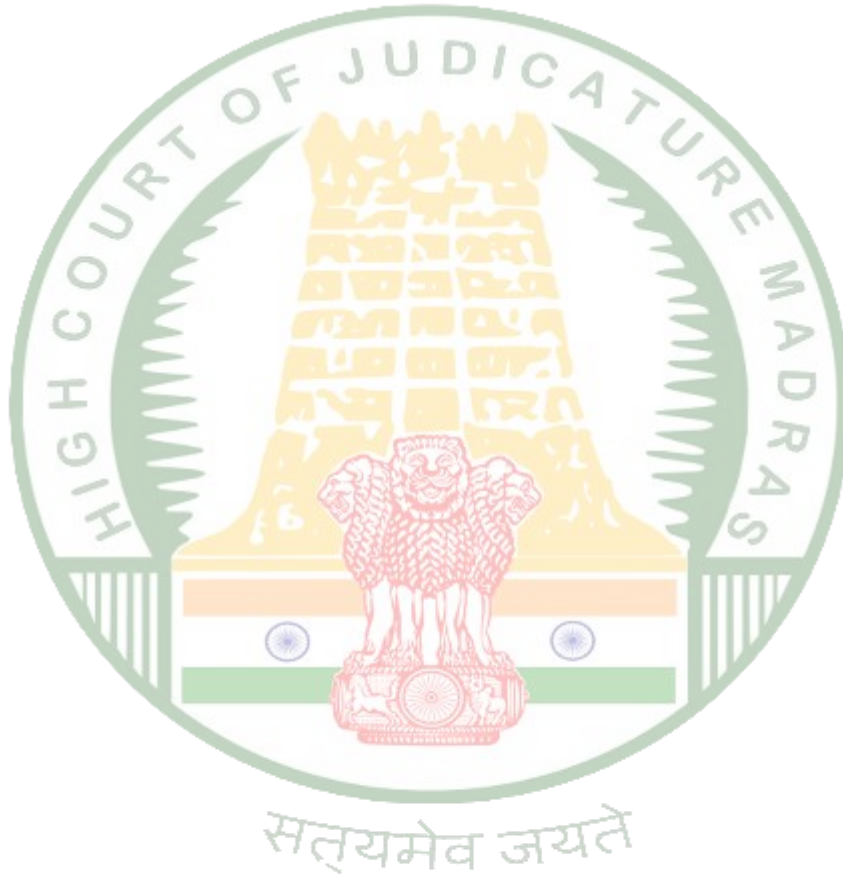
3.The Judicial Magistrate, Wallajah.

+1 cc to Mr.N.Sudharsan, Advocate,sr.13733

+1 cc to Mr.S.Krishnasamy, Advocate,sr.13713.

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Cr1.RC.No.1387 of 2016



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