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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.NO.6311 OF 2020

AND

CRL.M.P.NO.3505 OF 2020

G.Sankaranarayanan @ Suresh
S/o.Gajendran
46, Town Hall 2nd Street,
Near Prakash Theatre,
Arakonam, Vellore District.

... Petitioner

Vs.

Sumathi @ Indira,
W/o.G.Sankaranarayanan,
2/20, Kambar Street,
Ramana Nagar, Perambur,
Chennai - 11.

... Respondent

PRAYER:

Criminal Original Petition filed under Section 482 of Cr.P.C. praying to set aside the order dated 11.02.2020 in M.P.No.2 of 2019 in M.P.No.553 of 2019 in M.C.No.146 of 2009 passed by the learned Principal Judge, Family Court, (Full Additional Charge of the I Additional Family Court), Chennai.

For Petitioner : Mr.Abrarmohamed Abdullah
For Mr.P.Krishnan

For Respondent : No appearance.

ORDER

This petition has been filed challenging the order passed in M.P.No.2 of 2019 in M.P.No.553 of 2019 in M.C.No.146 of 2009 dated 11.02.2020, passed by the learned Principal Judge, Family Court, (Full Additional Charge of the I Additional Family Court), Chennai, thereby dismissing the petition filed by the petitioner to recall the order dated 03.10.2019 passed in M.P.No.553 of 2019 in MC.No.146 of 2019 for raising the attachment of his salary.



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2. Heard Mr. Abrarmohamed Abdullah, learned counsel appearing for the petitioner. Though notice served to the respondent and her name printed in the cause list, no one is appeared on behalf of the respondent either by person or through pleader.

3. It is avert in the petition that the petitioner got married with the respondent on 13.06.1994. Due to their wed lock, they gave birth to two male children. Due to the strange relationship between the petitioner and the respondent, the respondent left the matrimonial home on 10.02.2002 and failed to take care of her matrimonial obligations. Therefore, the petitioner filed a petition for divorce in H.M.O.P.No.37 of 2006 on the file of the learned Additional District Court, Thiruvallur and obtained decree of divorce on 22.01.2008. Thereafter, the petitioner got second marriage with one physically challenged lady on 27.08.2009 to look after his two minor sons. After the period of seven years, the respondent filed petition under Section 125(3) of Cr.P.C., for claiming maintenance of Rs.10,000/- per month in M.C.No.146 of 2009 on the file of the I Additional Principal Judge, Family Court, Chennai. The Family Court ordered maintenance of Rs.5,000/- payable by the petitioner in favour of the respondent herein by an order dated 21.06.2016. Aggrieved by the same, the petitioner filed a revision petition in Crl.R.C.No.1063 of 2016 before this Court and the same was allowed by remanding the matter for enquiry on condition that the petitioner shall deposit a sum of Rs.2 lakhs on four installments. The said condition was complied with by the petitioner and the said amount was also withdrawn by the respondent herein.

4. It is also seen that the respondent is working as an Accountant in Kerala Spices and she is living in luxury. The respondent also filed interim maintenance petition in I.A.No.11 of 2005 in the petition filed for restitution of conjugal rights in H.M.O.P.No.77 of 2002. Subsequently she did not appear before the said Court and the said petition was dismissed. Therefore already she waived her right to get maintenance as such, she cannot file another petition for maintenance. Further the respondent is not at all entitled for any maintenance, since she left the matrimonial home, thereby deserted the petitioner on 10.02.2002 itself and failed to do her matrimonial obligations.

5. That apart, that the respondent filed the petition seeking arrears of maintenance without any order for payment of maintenance. Unfortunately, the employer of the petitioner had received a notice for attachment of salary on 15.10.2019. Immediately on verification, the petitioner came to understand that no interim maintenance or order of attachment has been passed. Thereafter the petitioner was also served the notice



issued by the Family Court. Without any order of interim maintenance, the respondent sent a communication to the petitioner's employer as if, an attachment order has been ordered. Therefore, the petitioner filed a petition recall the order dated 03.10.2019 passed in M.P.No.553 of 2019 in M.C.No.146 of 2009, thereby directing the petitioner to pay arrears of maintenance of Rs.3,85,000/- to the respondent herein. The said petition was dismissed by the impugned order on the ground that the petitioner is bound to settle the arrears amount of Rs.3,85,000/-. Therefore, the finding of the Court below is perverse as such this Court has no other option to interfere with the findings of the trial Court.

6. Accordingly, this Criminal Original Petition stands allowed and the order dated 11.02.2020 passed by the learned Principal Judge, Family Court, (Full Additional Charge of the I Additional Family Court), Chennai in M.P.No.2 of 2019 in M.P.No.553 of 2019 in M.C.No.146 of 2009 is hereby set aside. The trial Court is directed to complete the trail in M.C.No.146 of 2009 within a period of three months from the date of the receipt of a copy of this Order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rts

To

The Principal Judge,
Family Court,
(Full Additional Charge of the
I Additional Family Court),
Chennai.

+1cc to Mr.P.Krishnan, Advocate, S.R.No.31025

CRL.O.P.No.6311 of 2020
and CrI.M.P.No.3505 of 2020

RSV(CO)
CS/02/12/2020