

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2020

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.6786 of 2020

and

CRL.M.P.Nos.3722 and 3723 of 2020

Rajasekaran

... Petitioner

Vs.

Mahalakshmi

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records and quash the proceedings in M.C.No.26/2018, on the file of the learned Judicial Magistrate, Thirukovilur, as illegal.

For Petitioner : No Appearance

For Respondent : No Appearance

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in M.C.No.26/2018, on the file of the learned Judicial Magistrate, Thirukovilur.

2. It is averred that the petitioner is the husband and the respondent is wife, who filed the petition for maintenance under Section 125 of Cr.P.C. The petitioner married the respondent on 28.03.2014 in the presence of elders of both the family. Out of their wedlock, no children were born to them. The petitioner seems to be physically challenged person and having 70% of physical limb disability. It is further averred that the respondent is having illegal relationship with one Sivaganesh and the same was also admitted by the respondent herein. She also consented for second marriage of the petitioner herein. While being so, the petitioner also filed divorce petition in H.M.O.P.No.33 of 2019 on the ground of adultery and cruelty as against the respondent herein. The divorce was granted in favour of the petitioner dated 21.11.2019 in H.M.O.P.No.33 of 2019 on the file of the learned Subordinate Judge, Ponneri, thereby granted divorce to the petitioner and the respondent on the ground of cruelty and adultery. In fact, he also lodged a complaint before the Inspector of Police, Gummidipoondi Police Station, Tiruvallur

with the allegation of cruelty committed by the respondent herein. The complaint was received and C.S.R.No.504 of 2018 was issued to the petitioner.

3. In this circumstance, the respondent herein filed maintenance case in M.C.No.26 of 2018 under Section 125 of Cr.P.C., seeking monthly maintenance of Rs.13,000/- from the petitioner herein. It is relevant to extract the provision under Section 125(4) of Cr.P.C., reads as follows:

''(4) No wife shall be entitled to receive an allowance from her husband under this section she is living in adultery, or if, without any sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent.''

Accordingly, no wife is entitled for any maintenance if she is living in adultery.

4. On perusal of records, divorce was granted in favour of the petitioner herein in H.M.O.P.No.33 of 2019 on the ground of adultery and cruelty. The relevant portion of the judgment in paragraph No.6 is extracted as under:

''6.Court notice and private notice sent to the 1st respondent and the same was refused by her and she was not appeared before this Court. Though the 2nd respondent entered his appearance through his counsel he has not filed any reply/counter to substantiate his case. On perusal of the evidence/deposition and exhibits marked by the petitioner, it appears that the marriage was solemnized between the petitioner and the 1st respondent and they were lived together as husband and wife and proved the case of adultery and cruelty. Since, the respondents 1 and 2 appeared before the Court and filed any reply/counter to substantiate their case, the adverse interference drawn against the respondents. Hence, it is decided that the petitioner has proved his case for granting dissolution of marriage on the ground of adultery and cruelty by acceptable oral and documentary evidence. For the above reason and discussions, it is decided that the petitioner is entitled to relief of dissolution of marriage which was held on 28.03.2014 on the ground of adultery and cruelty.''

5. Therefore, when respondent/wife is living with other male namely Ganesh @ Sivaganesh, she is not entitled for any maintenance or interim maintenance from the petitioner herein.

6. Therefore, the proceedings in M.C.No.26 of 2018 is nothing but abuse of process of Court and it cannot be sustained as against the petitioner.

7. In the result, this Criminal Original Petition stands allowed and the proceedings in M.C.No.26 of 2018 on the file of the learned Judicial Magistrate, Thirukovilur is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Judicial Magistrate,
Thirukovilur.

2. Do-Thro' The Chief Judicial Magistrate,
Thiruvallur District.

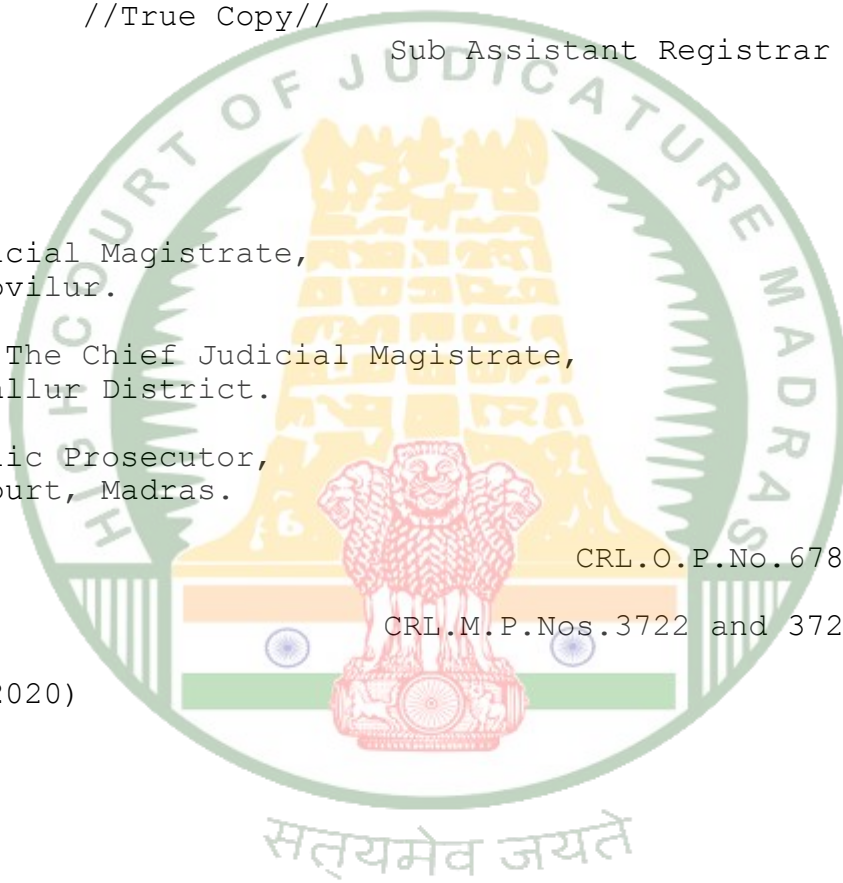
3. The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.6786 of 2020

and

CRL.M.P.Nos.3722 and 3723 of 2020

KK(CO)
CB(12/10/2020)



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