

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.O.P.No.16031 of 2019
and
Crl.M.P.No.7999 of 2019

Selva

.. Petitioner

Vs.

Sumithra

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for records and set aside the order made in Criminal Revision Petition No.80 of 2015 dated 26.10.2017 on the file of Principal Sessions Judge, Salem, Reversing the order in C.M.P.No.3610 of 2012 in M.C.No.2 of 2010 dated 16.03.2015 on the file of Judicial Magistrate No.1, Sankari.

For Petitioner : Mr.M.Udayakumar for
M/s.Karan and Uday

For Respondent : Mr.R.Marudhachalamurthy

O R D E R

This Criminal Original Petition has been filed seeking to call for records and set aside the order made in Criminal Revision Petition No.80 of 2015 dated 26.10.2017 on the file of Principal Sessions Judge, Salem, reversing the order in C.M.P.No.3610 of 2012 in M.C.No.2 of 2010 dated 16.03.2015 on the file of Judicial Magistrate No.1, Sankari.

2.Heard Mr.M.Udayakumar, the learned counsel appearing for the petitioner and Mr.R.Marudhachalamurthy, learned counsel appearing for the respondent.

3.Initially before the Court of Judicial Magistrate No.1, Sankari, the respondent who is the wife of the petitioner filed the above referred maintenance application in M.C.No.2 of 2010 under Section 125 Cr.P.C. in which she is claiming maintenance from the petitioner/husband for her livelihood. In the said

application, due to non appearance of the petitioner herein the learned Judicial Magistrate No.1, Sankari passed an ex parte order, ultimately the said application is allowed and directs the petitioner to pay a sum of Rs.5,000/- per month as maintenance to the respondent.

4.Challenging the same the respondent herein filed an application under Section 126 (2) of Cr.P.C. before the same Court praying to set aside ex parte order. The learned Judicial Magistrate No.1, Sankari dismissed the said application holding that the respondent herein is entitled to receive maintenance amount from the petitioner. Aggrieved over the same the petitioner herein filed Revision Petition before the learned Principal Sessions Judge, Salem under Section 397 of Cr.P.C. praying to set aside the order dated 16.03.2015 passed by the learned Judicial Magistrate No.1, Sankari by order dated 26.10.2017, the learned Principal Sessions Judge, Salem had allowed the said application, on condition that the petitioner has to deposit a sum of Rs.1,15,000/- to the credit of M.C.No.2 of 2010.

5.Thereafter, the petitioner is before this Court praying to set aside the impugned order passed by the learned Principal Sessions Judge, Salem in C.R.P.No.80 of 2015. Initially, when at the time of admitting this original petition, this Court directed the petitioner to deposit a sum of Rs.2,00,000/- to the credit of M.C.No.2 of 2010 on the file of the learned Judicial Magistrate No.1, Sankari and also directed the petitioner that he should continue to pay the maintenance at the rate of Rs.5,000/- monthly to the respondent from the month of July 2019 before the 5th of every month. In this regard, the learned counsel appearing for the respondent fairly conceded that the conditional order passed by this Court is complied with by the petitioner and thereafter, the said amount has been disbursed to the respondent. Therefore, it is made clear that the conditional order passed by this Court was obeyed by the petitioner.

6.In otherwise, it is well settled law for rendering the complete justice in any matter, it is necessary to hear both sides. In this case admittedly, the learned Magistrate passed an award after setting the petitioner ex parte. Therefore in the said circumstances, an opportunity must given to the petitioner to defend their case in proper perspective. In such view of the matter, the learned Principal Sessions Judge, Salem had allowed the said Criminal Revision subject to the condition that the petitioner shall deposit a sum of Rs.1,15,000/- to the credit of M.C.No.2 of 2010 on or before 27.11.2017 and set aside the order dated 16.03.2015 passed in C.M.P.No.3610 of 2012 in M.C.No.2 of 2010 on the file of Judicial Magistrate No.1, Sankari. Even after knowing the same that the said order is in favour of the

petitioner, he filed this Criminal Original Petition, seeking for the relief to set aside the order dated 26.10.2017 passed in Criminal Revision No.80 of 2015 on the file of the learned Principal Sessions Judge, Salem. It appears that the petitioner has aggrieved only in respect to the direction to deposit a sum of Rs.1,15,000/- to the credit of M.C.No.2 of 2010.

7. Now on going through the impugned order passed by the learned Principal Sessions Judge, Salem, it reveals that the learned Judge has taken note of the fact that after solemnizing the marriage between petitioner and respondent, the respondent herein gave birth to one male child and that the respondent has not sought for any maintenance for the child who was born as physically challenged and that the respondent has no means to maintain herself and her child and therefore, considering these circumstances, the trial Court has allowed the Revision Petition subject to the condition to deposit a sum of Rs.1,15,000/- to the credit of M.C.No.2 of 2010 in order to give a reasonable opportunity to the petitioner to defend his case. The Revisional Court has also taken note of the fact that the petitioner has not been complying with the interim order of paying maintenance of Rs.5,000/- per month and in total, there is due of Rs.4,60,000/- for 92 months from 04.02.2010 to 03.10.2017. In such circumstances, the Revisional Court thought it appropriate to impose condition by directing the petitioner to deposit a sum of Rs.1,15,000/- for allowing the petition. Considering the prevailing circumstances, this Court came to the conclusion that the said order passed by the learned Judicial Magistrate No.1, Sankari is a justifiable one. Apart from that, while entertaining the present Criminal Original Petition, by order, dated 21.06.2019, this Court granted interim stay of operation of the impugned order, subject to the condition that the petitioner shall deposit a sum of Rs.2 lakhs to the credit of M.C.No.2 of 2010 and also to continue to pay maintenance at the rate of Rs.5,000/- to the respondent from the month of July, 2019. Therefore, in view of the above facts and circumstances, this Court is of the view that the order passed by the learned Principal Sessions Judge, Salem is well within the law and therefore the Original Petition filed by the petitioner is liable to be dismissed as devoid on merits.

8. Accordingly, the Criminal Original Petition filed by the petitioner is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Salem

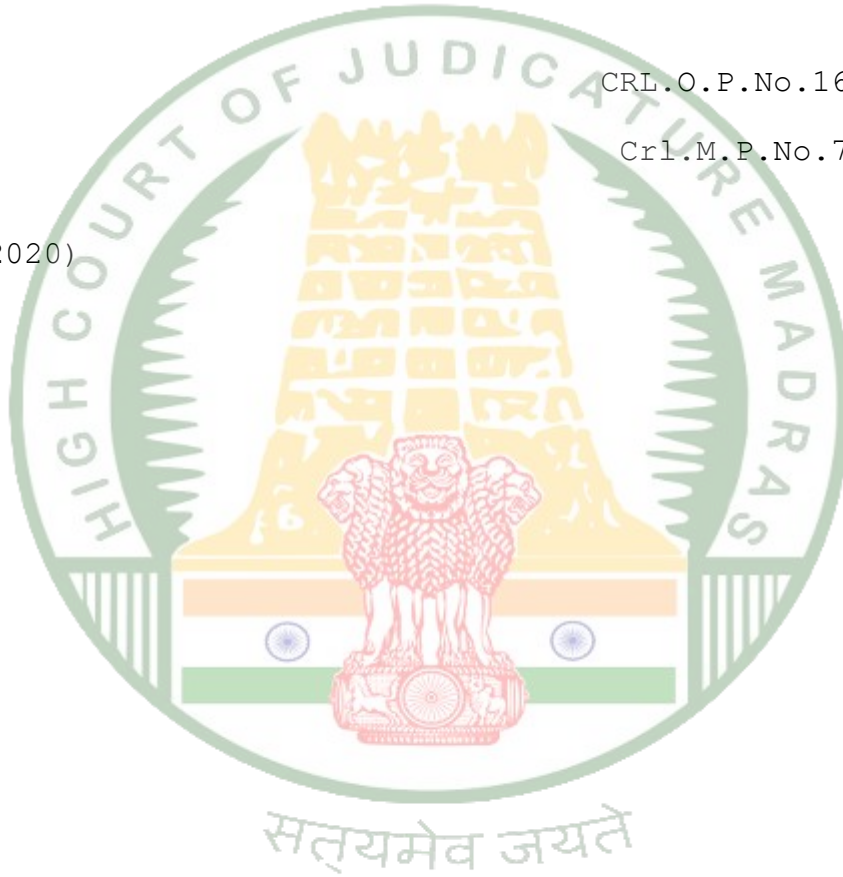
2. The Judicial Magistrate No.1,
Sankari.

3. Do- Thro' The Chief Judicial Magistrate,
Salem

+lcc to Mr.R.Marudhachalamurthy, Advocate in SR.NO..33986

CRL.O.P.No.16031 of 2019
and
Crl.M.P.No.7999 of 2019

(CO)
RV(04/12/2020)



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