



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated: 04.02.2020
CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.RC(MD)No.9 of 2020
and
Crl.MP(MD)No.53 of 2020

P.Raja : Petitioner/Petitioner/Respondent

Vs.

1. P.Devi
2. Minor Kalanjiya Thulasi
Represented by Guardian and
Mother the 1st respondent P.Devi
: Respondents/Respondents/Petitioners

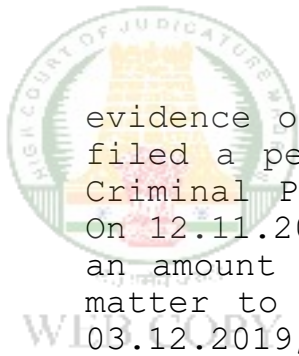
Prayer: Criminal Revision filed under section 397 r/w 401 of the Code of the Criminal Procedure against the order, dated 03.12.2019 passed by the Family Judge, Madurai, in Crl.MP No.182 of 2019 in MC No.167 of 2015.

For Petitioner : Mr.G.Kannan
For Respondents : No appearance

O R D E R

This criminal revision has been filed against the order, dated 03.12.2019 passed by the Family Judge, Madurai, in Crl.MP No.182 of 2019 in MC No.167 of 2015.

2.The marriage between the petitioner and the first respondent was solemnized on 27.09.2007 and out of wedlock, a female baby was born to them and due to matrimonial tiff, the petitioner filed a petition in HMOP No.277 of 2008 on the file of the Family Court, Madurai, seeking for an order of declaration to declare the marriage solemnized between him and 1st respondent as null and void. The Family Court, by its order, dated 15.12.2017 declared the marriage as null and void under section 11 of the Hindu Marriage Act. Subsequently, the 1st respondent had filed a case in MC No.167 of 2015 on the file of the Family Court, Madurai, seeking for maintenance for herself and minor daughter. IN that case, the petitioner/husband has filed counter on 03.10.2016. The 1st respondent has examined in chief and she was cross examined by the petitioner and the case was posted for the evidence on the side of the respondents. On 25.07.2019, when the case was posted for hearing, the petitioner was absent due to viral fever and hence, the



evidence on the side of the respondents was closed. The petitioner filed a petition in Cr.MP No.182 of 2019 under section 311 of the Criminal Procedure Code to reopen the evidence of the respondents. On 12.11.2019, the said petition was allowed with a condition to pay an amount of Rs.2,500/- as costs to the respondents and posted the matter to 03.12.2019 for compliance. When the case was called on 03.12.2019, the petitioner called absent and he did not pay the cost of Rs.2,500/- to the respondent(s). The learned Family Court, by order, dated 02.12.2019 dismissed the said petition for not paying the costs. When the case was taken up for hearing on 20.12.2019, both the petitioner and the respondents were present and the petitioner has filed a petition to reopen the CrI.MP No.182 of 2019, which was returned by the trial court. Aggrieved over the same, the petitioner/husband is before this court.

3.Heard the learned counsel appearing for the petitioner and perused the materials available on record. There is no representation for the respondents.

4.The main contention of the petitioner is that the non-cross examination on the side of the petitioner is neither willful nor wanton, but only due to unavoidable circumstances and the trial court failed to see that the petitioner is ready to cross examine the witnesses on the same day, when they appear and other conditions that would be imposed by the trial court and the trial court failed to see that recalling the witnesses would not cause any prejudice to the other side, on the other hand, it would be needful for the petitioner to disprove the respondents case and to establish his innocence and prays for allowing the criminal revision, by setting aside the order of the trial court.

5.It is seen from the records that originally the maintenance case was filed in the year 2015 and the petitioner has filed counter on 03.10.2016. On 25.07.2019, when the case was taken up for hearing, the petitioner was absent due to viral fever and hence, the evidence on the side of the respondents was closed. The petition filed by the petitioner in CrI.MP No.182 of 2019 under section 311 of the Criminal Procedure Code, was allowed on 12.11.2019 on payment of costs and due to his non-compliance of the order passed by the Family Court, Maudrai, the said petition was dismissed.

6.It is well settled that Section 311 Cr.P.C petition can be filed at any stage of the proceedings and the Court below has a wide discretionary power under Section 311 of Cr.P.C and the same can be used to ensure interest of justice. According to the learned counsel appearing for the petitioner, the Court below has not exercised its discretion by allowing the application filed under Section 311 of Cr.P.C.



7. On coming to the instant case on hand, it is seen that even though the petitioner was ready to cross examine the witnesses, the trial court without considering the same, has dismissed the petition filed under section 311 of the Criminal Procedure Code for non-compliance of the order, dated 12.11.2019.

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8. It is trite law that a petition under Section 311 Cr.P.C. can be filed at any time before the Judgment is delivered. But, at the same time, the petitioner should explain how the evidence of the said witnesses is essential to the just decision of the case. This court finds that in the interest of justice, the reasons stated by the petitioner are acceptable.

9. For all the reasons stated above, this court is of the considered view that the impugned order passed by the trial court is liable to be set aside and accordingly, it is set aside.

10. In fine, this criminal revision is **allowed**. The impugned order, dated 03.12.2019 passed by the Family Court, Madurai. in Cr.M.P.No.182 of 2019 in M.C.No.167 of 2015 is hereby set aside. The petitioner is directed to comply with the conditional order, dated 12.11.2019 passed by the Family Court, Madurai, within a period of two weeks from the date of receipt of a copy of this orders. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

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To

The Judge,
The Family Court,
Madurai.

+1 CC to Mr.S.KRISHNAN, Advocate (SR-4728[F] dated 04/02/2020)

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