



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.4609 of 2020

and

Crl.M.P. (MD)No.2623 of 2020

Paulraj @ Balasubramanian

... Petitioner

Vs.

Esakiammal

... Respondent

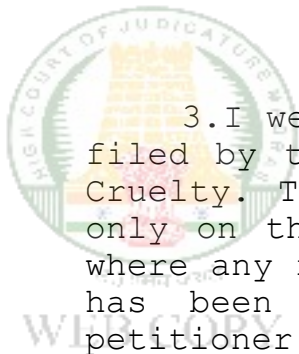
Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to the order dated 21.01.2020 passed by the 3rd Additional District Judge, Tirunelveli in Crl.R.C.No.38 of 2018 confirming the order dated 16.10.2018 in Crl.M.P.No.1839 of 2014 passed by the Chief Judicial Magistrate, Tirunelveli and set aside the same.

For Petitioner : Mr.R.Pon Karthikeyan

O R D E R

The petitioner got married to the respondent on 14.02.1991. The respondent filed M.C.No.65 of 2004 on the file of learned Chief Judicial Magistrate, Tirunelveli and obtained an order in her favour. Later she obtained an order of enhancement of the maintenance amount. The petitioner herein filed Cr.M.P.No.1839 of 2014 on file of the learned Chief Judicial Magistrate, Tirunelveli for cancelling the order of maintenance. The same was set aside by the learned Trial Magistrate vide order dated 16.10.2018. The same was challenged in Crl.R.C.No.38 of 2018 but the Revision Court dismissed the revision case. Questioning the same, this criminal original petition is came to be filed.

2.The primary argument of the petitioner's counsel is that the marriage between the petitioner and the respondent was dissolved vide order dated 24.03.2016 in H.M.O.P.No.3 of 2015 on the file Additional Sub Judge, Tirunelveli. He would further argue that the respondent has been found to be living in adultery and that therefore she is not entitled to continue claim maintenance from him.



3.I went through the materials on record. The divorce petition filed by the petitioner was on two grounds. (a) Adultery and (b) Cruelty. The learned Trial Judge granted divorce to the petitioner only on the ground of cruelty on the part of the respondent. No where any finding as regards the adulteress conduct of the respondent has been made. Therefore, this Court cannot assume that the petitioner had established his allegation of adultery made against the respondent. It is true that the marriage between the petitioner and the respondent stood dissolved and the petitioner's counsel would claim that this order has become final. But then as per Section 125 of Cr.P.C., even a divorced wife is also entitled to maintenance.

4.The learned Trial Magistrate had elaborately considered the contentions of the petitioner and thereafter chose to dismiss the petition filed for cancelling the maintenance order. The same has also been confirmed by the Revisional Court. The second revision is obviously barred in terms of Section 397(3) of Cr.P.C. This statutory bar cannot be circumvented by invoking Section 482 of Cr.P.C. No exceptional circumstance has been found to be exist in this case. I find no ground to interfere. The orders passed by the Courts below confirmed and the criminal original petition stands dismissed. consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Ias

To:

1.The III Additional District Court,
Tirunelveli.

2.The Chief Judicial Magistrate,
Tirunelveli.

+1 CC to M/s.R.PONKARTHIKEYAN, Advocate (SR-12107[F]

Cr1.O.P(MD)No.4609 of 2020

16.03.2020

SMA/02/06/2020/2P/4C