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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.No.9621 of 2018
and
Crl.M.P.No.4932 of 2018

Dominic Raj

...Petitioner

Vs.

1. Celine Preetha
2. Kevin Niranjana
3. Punith Joshua

Respondents 2 & 3 minors are
represented by their mother
1st respondent

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records leading to the M.C.No.6 of 2016 on the file of the Judicial Magistrate, Alandhur and quash the same.

For Petitioner : Mr.V.Balamurugane
For Respondents : No appearance

O R D E R

The petitioner has filed this petition to call for the records leading to the M.C.No.6 of 2016 on the file of the Judicial Magistrate, Alandhur and quash the same.

2. The case of the petitioner is that the petitioner is the husband of the 1st respondent and the marriage of the petitioner and the 1st respondent was performed on 07.05.2009 at Sacred Heart Church Puducherry as per Christian rites. After the marriage, they were blessed with two children (respondents 2 and 3 herein). However due to non compatibility in the marriage life, the petitioner has filed H.M.O.P for divorce before the Family Court, Puducherry and further the 1st respondent had preferred the Maintenance Petition under Section 125 Cr.P.C. by alleging that the petitioner did not take care of the 1st respondent and their two children and that the 1st respondent alone is taking care of herself and the two children and also their educational expenses and other expenses. Challenging the same, the present petition is filed.



3. The learned counsel appearing for the petitioner submitted that there was a matrimonial dispute between the petitioner and the respondent. Already the petitioner has filed the petition for divorce before the Family Court. After filing of the said petition by the petitioner, in order to harass the petitioner, the 1st respondent has filed the Maintenance Petition before the Magistrate Court, Alandur and the same is not sustainable and therefore, prays for appropriate orders.

4. Though notice was served, there is no representation on behalf of the respondents. Considering the fact that the case is pending for more than three years, this Court is inclined to decide the matter based on the available records.

5. Though petitioner claims that he filed the divorce petition before the Family Court and during the pendency of the same, the 1st respondent in order to harass the petitioner herein, filed the Maintenance Petition, this Court is of the view that the mere pendency of the divorce petition before the Family Court, does not preclude the respondent from claiming maintenance from the petitioner and further the petitioner is challenging the petition filed by the respondents claiming maintenance at its inception, which is wholly unsustainable. Hence, I am not inclined to consider the relief sought for by the petitioner. This Court is not inclined to render any opinion on the merits of the case as it will affect the rights of the parties before the Trial Court and therefore, it is open to the parties to canvass all their grounds before the Trial Court.

6. For the reasons aforesaid, this Criminal Original Petition is dismissed. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Alandhur.



2. The Public Prosecutor,
High Court, Madras.

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Cr1.O.P.No.9621 of 2018
and
Cr1.M.P.No.4932 of 2018

RSV(CO)
LS(13/09/2021)