

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.No.22036 of 2018
and
Crl.M.P.No.12119 of 2018

Thiruganasambatham

.. Petitioner

Vs.

R.Murugalakshmi

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for records and quash the M.C.No.1 of 2018 on the file of the Family Court, Erode, Erode District.

For Petitioner : Mr.K.Karthikeyan

सत्यमेव जयते

ORDER

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This petition has been filed to call for the records and quash M.C.No.1 of 2018 on the file of the Family Court, Erode, Erode District.

2. The case of the petitioner is that the marriage of the petitioner and the respondent was solemnized on 13.03.1995 as per the Hindu Rites and Customs and the said marriage was an arranged marriage. After marriage they were blessed with girl child on 31.12.1996 and thereafter, there was a matrimonial dispute in between them. Due to which, the respondent Wife filed a petition for divorce under Section 13(1)(1A) of the Hindu Marriage Act, on the file of the Principal Sub Court, Erode in H.M.O.P.No.247 of 2011 and the same was transferred to the Family Court Erode, renumbered as H.M.O.P.No.31 of 2014 and in the meanwhile, the respondent filed a maintenance petition in the said HMOP. No.247/2011, in I.A.No.431 of 2012, seeking maintenance for herself and her daughter and the said Interlocutory Application was allowed by granting the maintenance to her daughter Rs.5,000/- per month and Rs.10,000/- for cost of the petition. The petitioner has paid the maintenance amount through ICICI bank, Kodumudi Branch and thereafter, the divorce was granted in favour of the respondent. Even thereafter the petitioner paid monthly maintenance to her daughter for Rs.2,33,615/- upto 11.08.2010. Again the respondent in order to harass the petitioner, had filed M.C.No.1 of 2018 under Section 125

Cr.P.C., seeking maintenance for her, before the Trial Court. Challenging the same, the present petition is filed.

3. The learned counsel appearing for the petitioner submitted that already the respondent has filed I.A.No.431 of 2013 in HMOP for maintenance. However the said petition was dismissed in respect of the respondent and allowed in respect of the daughter by directing the petitioner to grant Rs.5,000/- per month as maintenance. Though the issue was already settled before the Family Court, the petitioner has filed petition under Section 125 Cr.P.C, purely to harass the petitioner and hence prays for allowing of this petition.

4. Though notice was served on the respondent, there is no representation on behalf of her. This Court, considering the paucity of time is inclined to dispose of the present petition based on the available records

5. The grievance of the petitioner is that though the earlier petition for maintenance was dismissed in respect of the respondent, again

filing a petition under Section 125 Cr.P.C before the Trial Court, seeking for the same cause of action, which was already sought for in I.A.No.431/2012, is not sustainable.

6. Merely because, the respondent has filed the said interlocutory application in the divorce petition for interim maintenance, it cannot preclude the respondent from claiming her right contemplated under Section 125 Cr.P.C. The point raised by the petitioner that for the same cause of action which was adjudicated in the earlier round of litigation, filing of a maintenance petition once again is unsustainable, cannot be accepted for the reason that ordering of maintenance at any particular point of time is on the basis of the circumstances as is available then and it will not preclude the petitioner from filing another maintenance petition before the Trial Court under Section 125 Cr.P.C. In such circumstances, I am not inclined to grant any relief to the petitioner. However liberty is granted to the petitioner to canvass all those facts before the Trial Court at the time of hearing of the Maintenance Petition as there is no expressive bar for entertaining the said maintenance petition and therefore, without contesting the petition before

the Trial Court, straight away approaching this Court by challenging the same at the threshold is not permissible.

7. Accordingly, this Criminal Original Petition is dismissed subject to the above observation.

30.07.2021

Speaking/Non Speaking order

Index : Yes/No

Internet: Yes/No

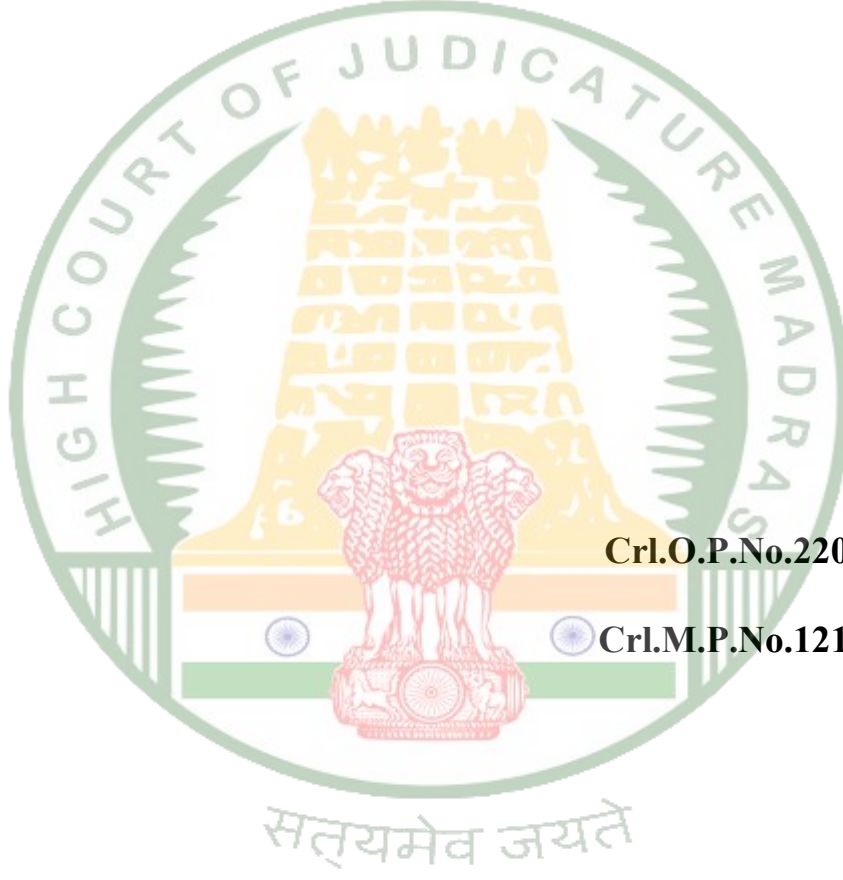
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To

1. The Family Court, Erode, Erode District.

2. The Public Prosecutor,
High Court, Madras.

M.DHANDAPANI,J.
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