



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

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THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRL.O.P.NO.22554 OF 2019

AND

CRL.MP.NO.11749 OF 2019

S.Shivasankara Murthy,
S/o.Sivanathan

... Petitioner

Vs.

1. M.Abirami,
D/o.Munirathinam
2. Subraja
D/o.Shivasankara Murthy,
Rep.by her mother and Natural Guardian,
the 1st respondent
3. The Chief Regional Manager,
Agricultural Insurance Company India Ltd.,
Old No.156, New No.323, First Floor,
Andhra Insurance Building,
Thambu Chetty Street,
Chennai-600 001.

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to allow this Criminal Original Petition and set-aside the docket order passed in MP.No.503 of 2017 in MC.No.358 of 2015 on the file of the II Additional Family Court, Chennai dated 19.06.2019.

For Petitioner : Mr.C.K.M.Appaji
for Mr.M.Appajicharles Kamalesh

For Respondents : O.S.Vijaya Sarathi
For R1 and R2



O R D E R

The petitioner filed this petition to set-aside the docket order dated 19.06.2019 passed in MP.No.503 of 2017 in MC.No.358 of 2015 on the file of the II Additional Family Court, Chennai dated 19.06.2019.

2. The learned Counsel for the petitioner submits that the petitioner herein and the first respondent are husband and wife and second respondent is their daughter. The petitioner herein tortured the second respondent sexually, thereby, she took the child to her native place and thereafter registered the complaint against the petitioner herein in crime No. 10 of 2014 before the All Women Police Station, Ayanavaram under Section 6 r/w, Section 5 (m & n) of the POCSO Act. Thereafter she filed a divorce petition before the II Additional Family Court, Chennai, in O.P.No.4096 of 2014, later she has voluntarily withdrawn the petition. Then, she filed a maintenance claim before the Family Court, Chennai in M.C.No.358 of 2015, later the above Court passed the eaparte order against the petitioner herein, following which, petitioner herein filed interlocutory application in I.A No. 368 of 2017, to condone the delay, which is still pending before the Family Court. In the Meanwhile, the II Additional Principal Judge, Family Court, Chennai passed the order to pay a sum of Rs.2,49,333/- to the credit of MC.No.358 of 2015, but, the learned counsel for the respondents submits that after passing the above order, a memorandum of understanding was executed between the petitioner herein and his Wife/first respondent. Accordingly, petitioner herein agreed to pay a sum of 25,000/- as maintenance with other conditions. But, at the time of arguments, the learned counsel for the petitioner submits that memorandum of understanding was obtained from the petitioner out of coercion. He disputed the genuineness of Memorandum of understanding. Now, on seeing the entire facts based upon the memorandum of understanding, the petitioner herein obeyed the Memorandum of understanding between them and paying a sum of Rs.25,000/ to the credit of the respondent from May 2021 onwards.

3. At the time of the argument, the petitioner and the first respondent/wife appeared before this Court and on enquiry, the petitioner stated that he is working as Assistant Manager in Agricultural Insurance Company, Limited and he is earning Rs.65,000/- out of which, he has paying a sum of Rs.25,000/- as maintenance to the first respondent.

4. On seeing the entire records placed before the Court, it is clear that the case was pending before the Court below without any progress due to the absence of the petitioner and



therefore exparte order was passed. Now, the issue between the parties has to be decided by the Trial Court and the alleged Memo of Understanding is also not accepted by the petitioner and this is not a forum to decide whether it was executed between them, as proof of veracity of the document and evidence of the parties are necessary. Both the parties are directed to approach the Trial Court to take Trial and learned Trial Judge is directed to dispose the case within a period of four months from the date of receipt of copy of this order.

5. Further more, the second respondent is aged about 9 years only she is studying school who was maintained by her mother. Considering the facts and circumstances of the case, the petitioner herein is directed to pay a sum of Rs.25,000/- regularly to the first respondent/wife herein until disposal of MC.No.358 of 2015 and also directed to pay 50% of the educational expenses of the second respondent/daughter.

6.As per the Memo of Understanding, the petitioner submits that he had paid a sum of Rs.10,00,000/- to the first respondent and that should be recorded, but, at the time of the enquiry, the first respondent stated that as per MOU agreement Rs.15,00,000/- is a compensation but she received only a sum of Rs.10,00,000/-. Recording the above submissions, this Court directs both the parties to work out their remedies before the trial Court.

7. Accordingly, this Criminal Original Petition is disposed of with the above directions. Consequently, connected Criminal Miscellaneous petitions is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

pbl

To

The Judge,
The II Additional Family Court,
Chennai.

+lcc to Mr.C.K.M.Appaji, Advocate, S.R.No.63049

+lcc to M/s.O.S.Vijaya Sarathi, Advocate, S.R.No.63669

Cr1.O.P.No.22554 of 2019

SMI (CO)

RLP (27/01/2022)