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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P.No.15132 of 2017
and
CRL.M.P.Nos.9539 and 9540 of 2017

Siva @ Sivakumar

... Petitioner/Petitioner/Respondents

Vs.

1. Smt.Menaka
 2. Minor.Karthik
 3. Minor.Sujitha
- (R-2&3 represented by their mother MenakaR1)

... Respondents/Respondents/ Petitioner

Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records relating to C.M.P.No.3045 of 2013 in M.C.No.01 of 2012 on the file of Learned Judicial Magistrate No.II, Thiruvannamalai and set aside the orders dated 11.04.2016 which was slightly modified by the Learned District Sessions Court, Thiruvannamalai by orders dated 20.04.2017 made in Crl.R.C.No.15 of 2016 on its file.

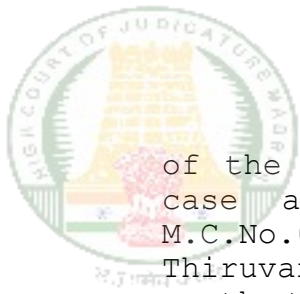
For Petitioner : Mr.G.Saravanan

For Respondents : Mr.B.Jawahar

ORDER

This Criminal Original Petition has been filed to call for the records relating to C.M.P.No.3045 of 2013 in M.C.No.01 of 2012 on the file of Learned Judicial Magistrate No.II, Thiruvannamalai and set aside the orders dated 11.04.2016 which was slightly modified by the Learned District Sessions Court, Thiruvannamalai by orders dated 20.04.2017 made in Crl.R.C.No.15 of 2016 on its file.

2. The brief facts of the case is that the 1st respondent is the wife and the 2nd and 3rd respondents are the son and daughter



of the petitioner herein. The 1st respondent / wife has filed a case against the petitioner in C.M.P.No.3045 of 2013 in M.C.No.01 of 2012 before the Judicial Magistrate Court No.II, Thiruvannamalai, seeking interim maintenance Rs.5,000/- per month to each of the respondents. It was submitted by the 1st respondent that she is finding very difficult to manage the expenses of her family and it is also very hard to maintain her two minor children without any income. Further, she has submitted that the petitioner is earning Rs.50,000/- as monthly income and leading a very luxurious life. It was also submitted by the 1st respondent that the petitioner with an intention to drag on the proceedings had denied the paternity of the two minor children born to him, hence 1st respondent had to seek for DNA test and other scientific methods to prove the paternity of the children. The petition for allowing a DNA test was allowed by the Court below and the same was proved by the Forensic Lab Analysis Test vide report dated 26.10.2015.

3. Denying the averments of the 1st respondent, It was stated by the petitioner that the claim of the 1st respondent is not valid and the petition is liable to be dismissed. It was also stated by the petitioner that the marriage between the petitioner and the 1st respondent is denied by the petitioner and in the said circumstances the claim for interim maintenance is not maintainable. It was further stated by the petitioner that the petitioner is presently an employee in the business carried on by the family members of his wife Mrs.Lakshminarayani and the 1st respondent with a bad intention has filed a case against him with false allegations.

4. The Learned Judicial Magistrate, Tiruvannamalai, after perusing the entire materials on record, has found that the 1st respondent has already filed a complaint against the petitioner before the All Women Police Station, Tiruvannamalai in Crime No.09 of 2010 under Sections 417, 506(i) IPC and Section 3(1)(x) of the SC/ST Act. Since the petition for interim maintenance was pending for a long time, the Learned Judicial Magistrate has allowed the same and directed the petitioner to pay a sum of Rs.2,000/- to the 1st respondent and Rs.1,500/- each to the 2nd and 3rd respondents on or before 5th day of every month, till the disposal of the main case.

5. Aggrieved by the order of the Learned Judicial Magistrate, Tiruvannamalai, the petitioner has filed CrI.R.C.No.15 of 2016 in C.M.P.No.3045 of 2013 in M.C.No.01 of 2012 before the District Sessions Court, Thiruvannamalai, for setting aside the order of the Learned Judicial Magistrate, Tiruvannamalai. The Learned District Sessions Judge, after hearing the parties concerned, has partly allowed the said petition and directed the petitioner to pay a sum of Rs.2,000/-



to the 1st respondent and Rs.1,000/- each to the 2nd and 3rd respondents on or before 5th day of every month. As against the said order, the petitioner has filed this Criminal Original Petition before this Court stating that the main petition itself ought to have been disposed of by the Learned Magistrate instead of taking up the interim application filed by the 1st respondent. It is also stated by the petitioner that the petitioner has got married one Smt.Lakshminarayani on 10.06.2001 and they have also got two male children, and as such, the Learned Magistrate ought not to have ordered interim maintenance to the 1st respondent. It is further stated by the petitioner that the 1st respondent is not a legally wedded wife of the petitioner, but the said Lakshminarayani is legally wedded wife, and as such, the Learned Magistrate ought not to have entertain the petition for interim maintenance.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondents, and perused the materials available on record.

7. On perusal of the records, it is seen that the petitioner and the 1st respondent are husband and wife. The 1st respondent has filed a case against the petitioner seeking interim maintenance Rs.5,000/- per month to each of the respondents before the Judicial Magistrate Court No.II, Thiruvannamalai. Considering the pendency of the said petition for a long time, the Learned Judicial Magistrate has allowed the same and directed the petitioner to pay a sum of Rs.2,000/- to the 1st respondent and Rs.1,500/- each to the 2nd and 3rd respondents on or before 5th day of every month, till the disposal of the main case. It is further seen that aggrieved by the said order, the petitioner has filed a petition before the District Sessions Court, Thiruvannamalai, for setting aside the order of the Learned Judicial Magistrate, Tiruvannamalai. The District Sessions Judge, after perusing the entire materials on record, has partly allowed the said petition and directed the petitioner to pay a sum of Rs.2,000/- to the 1st respondent and Rs.1,000/- each to the 2nd and 3rd respondents on or before 5th day of every month. As against the said order, the petitioner has filed this Criminal Original Petition before this Court by raising various grounds.

8. The contentions raised by the learned counsel for the petitioner before this Court cannot be considered for the reason that the amount sought for by the 1st respondent / wife for maintaining herself and children is only Rs.5,000/- per month to each of the respondents, which is very meagre, and which is also not sufficient for sustaining the life. The Court below also has directed the petitioner to pay a very meagre amount i.e. Rs.2,000/- to the 1st respondent and Rs.1,500/- each to the 2nd



and 3rd respondents as interim maintenance. When that being the case, this Court is not inclined to accept the case of the petitioner that he cannot pay the amount as per the order of the Judicial Magistrate Court No.II, Thiruvannamalai, without any valid reason. The reason for not maintaining was negatived by the Court below as the paternity test (DNA) also proved that the children are born to him. Hence the prayer of the petitioner fails and this Criminal Original Petition is to be dismissed.

9. It is also not clear before this Court as to whether the petitioner has been paying all the maintenance amount as directed by the Court below. Hence, this Court is of the view that the Court below has to go into the merits of the case and pass appropriate orders regarding the maintenance within the time to be fixed by this Court.

10. Accordingly, the Learned Judicial Magistrate No.II, Tiruvannamalai, is directed to expedite the trial and dispose of the maintenance case in M.C.No.01 of 2012 on or before 31.12.2021.

11. In the result, this Criminal Original Petition is dismissed with the above direction. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

raja

To

1. The District,
Sessions Judge,
Thiruvannamalai.

2. The Judicial Magistrate Court No.II,
Tiruvannamalai.

+1cc to Mr.B.Jawahar, Advocate, S.R.No.35334

CRL.O.P.No.15132 of 2017 and
CRL.M.P.Nos.9539 and 9540 of 2017

(SR-IICO)
CT(26/08/2021)