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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.22973 of 2018
and
Crl.M.P.No.12836 of 2018

Nataraj @ Adalarasan

.. Petitioner

Vs.

1. Vasavi
2. Minor Eashwar,
Rep. by his Natural Guardian and mother
Vasavi

.. Respondents

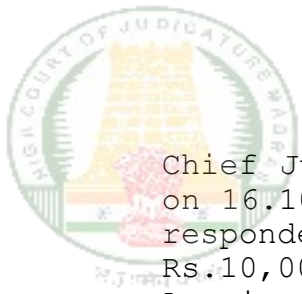
PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in Crl.R.C.No.12 of 2014 dated 07.09.2016 on the file of Principal and District Sessions Judge, Nagapattinam confirming the M.C.No.1 of 2014 dated 16.10.2014 on the file of Chief Judicial Magistrate, Nagapattinam.

For Petitioner : Mr.G.Mohammed Aseef

O R D E R

The petitioner has filed this petition to set aside the order passed in Crl.R.C.No.12 of 2014 dated 07.09.2016 on the file of Principal and District Sessions Judge, Nagapattinam confirming the M.C.No.1 of 2014 dated 16.10.2014 on the file of Chief Judicial Magistrate, Nagapattinam.

2. The case of the petitioner is that the marriage of the petitioner as well as the respondent was solemnized on 07.06.2012 at Udayamarthandapuram as per Hindu rites and customs. Due to wedlock, they begotten the 2nd respondent on 17.07.2013. Thereafter, the respondent / wife had left the company of the husband and deprived him of marital rights without proper and sufficient cause and hence the petitioner has filed H.M.O.P.No.131 of 2013, for Restitution of Conjugal Rights, on the file of the Sub Ordinate Court, Mannargudi and obtained an exparte order on 17.02.2014. However, the 1st respondent evade to live with the petitioner and filed a maintenance petition in M.C.No.1 of 2017, on the file of the



Chief Judicial Magistrate, Nagapattinam and the same was ordered on 16.10.2014 fixing maintenance as Rs.1000/- monthly for the 1st respondent and Rs.5,000/- for other expenses and also Rs.10,000/- for the 2nd respondent towards educational expenses. Aggrieved by the said order, the petitioner has preferred CrI.R.C.No.12/2014, on the file of the Principal District and Sessions Judge, Nagapattinam and the same was dismissed on 07.09.2016. Challenging the said order passed by the Lower Court and to set aside the same, the present petition is filed.

3. The learned counsel appearing for the petitioner submitted that the Family Court order for the Restitution of Conjugal Rights was ordered in favour of the petitioner and immediately thereafter a notice was caused to the 1st respondent for living together, however, the 1st respondent failed to comply with the order of the Family Court and thereby deprived the rights of the petitioner for marital life. As per Section 125(4) Cr.P.C, the 1st respondent is not entitled for any maintenance. Accordingly prays for allowing of this petition.

4. Though notice was served, there is no representation on behalf of the respondents. Considering the pendency of this petition for over three years, this Court is decided to dispose of the matter based on the available records.

5. The grievance expressed by the petitioner is that admittedly the petitioner had obtained exparte decree in respect of the Restitution of Conjugal Rights against the 1st respondent, inspite of that the 1st respondent did not join the company of the petitioner, thereby the petitioner claims that the respondent is not entitled for maintenance in view of Sub Section 4 of Section 125 Cr.P.C.

6. For better appreciation, Section 125(4) Cr.P.C. is extracted hereunder:

'' No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.''

6. A perusal of the above provisions reveals that the wife shall not be entitled to receive an allowance if she refuses to live with her husband. In the present case, it is stated by the petitioner that the respondent, even after the Court order, refuses to live with her husband, without any sufficient reasons, inspite of the wife being put on notice about the exparte order passed by the Trial Court, however, a perusal of the materials available on record reveals that though notice informing the exparte order passed the Trial Court is alleged to have been served on the respondent wife, however, no



particulars with regard to the same having been served on her, has been placed before this Court. Mere copy of the notice will not be sufficient to hold that the petitioner wife has been put on notice about the exparte order. Further perusal of the affidavit filed by the respondent wife in the maintenance petition reveals that the respondent was ill treated by the family members of the petitioner and got harassed at the hands of the respondent for more dowry.

7. Considering the above facts, this Court is of the opinion that the 1st respondent may not aware of the order of the Trial Court, which was ordered exparte. When there is no knowledge with regard to the order of the Family Court, the point raised by the petitioner that even after notice, refusing to live with him, is not acceptable.

8. In view of the aforesaid finding recorded, this Court is of the considered view that the present petition cannot be sustained on the ground made out by the petitioner. The maintenance order passed by the Trial Court is just and reasonable and this Court is not inclined to interfere with the maintenance order passed by the Court below. Considering the present situation, this Court is of the further view that once the revision is entertained, further revision is not permissible under Section 482 Cr.P.C. Since there is no serious miscarriage of process of law and further the petitioner did not establish the case against the respondents, this Court is not inclined to interfere with the order passed by the Lower Court in CrI.R.C.No.12/2014.

9. Accordingly, this Criminal Original Petition is dismissed, confirming the order passed by the Principal District and Sessions Judge, Nagapattinam, in CrI.R.C.No.12/2014. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal and District Sessions Judge,
Nagapattinam.

2.The Chief Judicial Magistrate,
Nagapattinam.



3. The Public Prosecutor,
High Court, Madras.

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GPL (CO)
CB (06/10/2021)

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and
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