



Crl.RC.819 of 2022
and
Crl.M.P.No.8331 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.819 of 2022

and

Crl.M.P.No.8331 of 2022

Tamizh Selvan

...Petitioner/Petitioner/Respondent

Vs.

1. Minor Lokesh
S/o. Tamizh Selvan

2. Minor Vinotha
D/o. Tamizh Selvan

The above minors 1 & 2 herein
are Rep. By their Maternal Grandmother
and Guardian Malliga ...Respondents/Respondents/Petitioners

The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure seeking to call for the records in respect of the order dated 08.04.2022 and subsequent dismissal order dated 22.04.2022 made in Crl.M.P.No.10 of 2022 in M.C.No.38 of 2017 passed by the learned Judicial Magistrate, Jayankondam and set aside the same.



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For Petitioner : Mr.M.Senthil Vadivu
For Respondent : Mr.K.Magendiravarman

ORDER

This Criminal Revision Petition has been filed to set aside the order passed by the learned Judicial Magistrate, Jayankondam in Crl.M.P.No.10 of 2022 in M.C.No.38 of 2017 dated 22.04.2022.

2. The petitioner is father and the respondents are minor children. Originally, the Guardian Maternal Grand Mother viz., Malliga represented the minor children/respondents filed maintenance case in M.C.No.38 of 2017 before the Judicial Magistrate, Jayankondam. Pending the above maintenance case, the petitioner has filed a miscellaneous petition before the learned Judicial Magistrate No.2, Jayankondam under Section 126(2) Cr.P.C., seeking to set aside the ex-parte order. On 08.04.2022, the learned Magistrate has allowed the petitioner with condition that the petitioner is directed to pay a sum of Rs.10,000/- as cost to the respondents. On 22.04.2022, the learned Magistrate has dismissed the petition on the ground



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of non-payment of Rs.10,000/- to the respondents.

3. Challenging the above orders passed by the learned Judicial Magistrate No.2, Jayankondam in Crl.M.P.No.8331 of 2022 filed by the petitioner under Section 126(2) Cr.P.C, the present revision has been filed.

4. The learned counsel for the petitioner would submit that prior to Covid -19, the petitioner was working in abroad. During Covid -19 pandemic the petitioner returned from abroad. He is unable to maintain himself. He already gave the immovable property to the respondents/minor children before filing of Maintenance Case.

5. The learned counsel for the respondents would submit that the petitioner was working in Singapore till last month. Now only he returned to India. The learned counsel for the respondent would further submit that the stand of the petitioner that during Covid-19, he came to India, is false.



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6. Heard both side counsel. Perused the materials available on record.

7. Admittedly, the petitioner is father and respondents are minor children. Since the non-appearance of the petitioner's counsel, the learned Magistrate has passed the ex-parte order. The petitioner filed a petition to set aside the ex-parte order and the said petition was allowed by the learned Magistrate on condition that the petitioner shall pay a sum of Rs.10,000/- for the cost to the respondents. Due to non-payment of cost, the petition was dismissed by the learned Magistrate. The appellate Court has discretion to reverse the ex-parte order. But the case pertains to maintenance under Section 125 of Cr.P.C., the learned Magistrate has imposed cost of Rs.10,000/- by the petitioner/father to the respondents/minor children. Therefore, this Court does not find any perversity in the order passed by the learned Magistrate.

In the result, this Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed.

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To

1. The Judicial Magistrate No.II,
Jayankondam.



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P.VELMURUGAN, J.,

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