



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No.3686 and 3688 of 2022

and

Crl.M.P(MD) No.2701 of 2022

WEB COPY

1.K.Kavitha
2.minor.S.Sujay ... Petitioners in both petitions
(Rep by his natural Guardian mother)

Vs

S.Sathish ... Respondent in both petitions

Prayer in Crl.O.P(MD) No.3686 of 2022: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in Crmp.No.18/2022 in M.C.No.82 of 2018, dated 04/02/2022 on the file of the learned Judge, Family Court Madurai District and set aside the same.

Prayer in Crl.O.P(MD) No.3688 of 2022: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in Crmp.No.19/2022 in M.C.No.82 of 2018, dated 04/02/2022 on the file of the learned Judge, Family Court Madurai District and set aside the same.

(In both petitions)

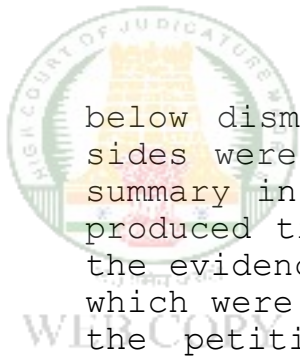
For Petitioners : Mr.K.S.Duraipandian

For Respondent : Mr.S.Muniyandi

COMMON ORDER

These Criminal Original Petitions have been filed to call for the records in Crmp.Nos.18 and 19 of 2022 in M.C.No.82 of 2018, dated 04/02/2022 on the file of the learned Judge, Family Court Madurai District and set aside the same.

2. The first petitioner is the wife and the second petitioner is the minor son of the respondent herein. The first petitioner and the second respondent got married on 04.09.2008 as per Hindu rites and customs. Due to mis understanding they got separated from the year 2012. In the year 2018, the first petitioner filed petition in MC No.82 of 2018 before the Family Court, Madurai seeking maintenance. Further on 10.01.2020 during the examination of the first petitioner she came to understand that some documents are not being marked as evidence . Immediately she preferred transfer CMP petition before this Court in Tr.CMP(MD) No.3809 of 2021. She also filed petition to recall PW.1 and mark certain documents. The Court



below dismissed the petition for the reason that evidence of both sides were already closed. The nature of maintenance case is only summary in nature. The documents sought to be marked have not been produced till date, so these petitioners to recall PW.1 and re-open the evidence of petitioner cannot be allowed to mark some document which were not produced before this Court. Further it is the duty of the petitioner in the maintenance case to produce oral and documentary evidence to prove real income of the respondent. Already sufficient chance was given to this petitioner after completion of entire evidence, this petition is filed to produce some other documents is only to fill up lacuna. However the learned counsel for the petitioner would submit that one more opportunity may be give to the petitioner, since the petitioner has only filed the case as against the respondent.

3. The learned counsel for the respondent would submit that only to prolong the case the petitioner has filed the petitions and the Court below has rightly dismissed the same, hence he seeks indulgence of this Court to dismiss these petitions.

4. Considering the above submissions, the petitioners may be given one more opportunity to prove their case. In view of the above the orders passed by the learned Judge, Family Court Madurai District in Crmp.Nos.18 and 19 of 2022 in M.C.No.82 of 2018, dated 04/02/2022 stands set aside and the Criminal Original Petitions are allowed. The trial Court is directed to fix a date for recalling PW.1 and if the petitioners fail to cross examine PW.1 on the date fixed by the trial Court, the trial Court is directed to proceed in accordance with law and complete the trial proceedings within a period of eight weeks from the date of receipt of a copy of this order. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

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To

1.The Judge,
The Family Court, Madurai District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Crl.O.P.(MD)No.3686 and 3688 of 2022

and

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