



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 29/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)No.5462 of 2019
and
Crl.MP(MD)No.3444 of 2019

D.Lakshmi : Petitioner

Vs.

P.Duraisamy @ Durairaj : Respondent

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to set aside the order of the Principal Sessions Judge, Trichy, made in Crl.RC No.94 of 2013, dated 24/02/2014 setting aside the order made in MC No.21 of 2012 on the file of the Judicial Magistrate, Manapparai, dated 23/07/2013.

For Petitioner : Mr.R.Pon Karthikeyan

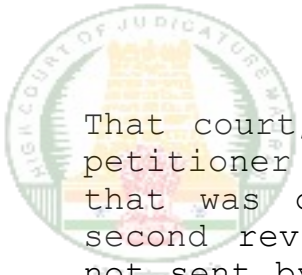
For Respondent : Mr.G.S.Asok Adhithyan

O R D E R

The petition has been filed seeking to set aside the order of the Principal Sessions Judge, Trichy, made in Crl.RC No.94 of 2013, dated 24/02/2014, setting aside the order made in MC No.21 of 2012 on the file of the Judicial Magistrate, Manapparai, dated 23/07/2013.

2.The facts in brief:-

The petitioner and the respondent are husband and wife and they got married, on 24/11/1983. Because of marriage, they begotten one male child and one female child. After the marriage, the husband developed some illicit intimacy with one Pachaiammal and he married her. The husband deserted the wife and the children also. The husband is having property worth about Rs.40,00,000/- and also earning Rs.500/- per day by working as 'Mason'. So she filed MC No.21 of 2012 before the Judicial Magistrate, Manapparai, seeking maintenance. That was allowed by granting Rs.1,500/- as monthly maintenance. Against the above said order, the husband preferred Crl.RC No.94 of 2013 before the Principal Sessions Judge, Trichy.



That court, allowed the revision, on 24/02/2014. Against that, the petitioner filed Cri.RC(MD)No.392 of 2014 before this court. But that was dismissed as withdrawn, on 11/11/2014 stating that the second revision is not maintainable. But proper communication was not sent by her counsel. Only after returning back from Kerala, she was informed about the dismissal. So, there is a delay of four years in filing the petition. Seeking quashment of the above said order, that has been passed by the revisional court, this criminal original petition has been filed.

3.Heard both sides.

4.It is an unfortunate case of the woman and children, who have been denied the basic amenities right from 2012. When she moved the petition seeking maintenance amount, even though the trial court ordered payment of maintenance in favour of the petitioner, the criminal revision filed by the husband was allowed by the Principal District Judge, Trichy and against which, as mentioned earlier, Cr.RC(MD)No.392 of 2014 was also filed before this court and that was also dismissed as withdrawn with liberty to file appropriate petition.

5.No doubt that the second revision in the form of filing a petition under section 482 Cr.P.C will not lie. But however that revision has been allowed by the revisional court. This petition has been filed on the basis of the liberty granted by this court in the above said criminal proceedings. Now the basic right of claiming maintenance against the husband cannot be denied without any sufficient cause as per the provisions of 125 Cr.P.C.

6.Now at the time of hearing, the learned counsel appearing for the respondent has submitted that all along the petitioner was able to maintain herself by doing work. Now she is sustaining her life till this date. This itself shows that she can maintain herself, which requires no interference by this court.

7.Per contra, the learned counsel appearing for the petitioner would submit that originally, the property was settled in favour of this petitioner in lieu of her maintenance. But later, that property was also taken back by the respondent. This was the specific stand taken during the course of hearing.

8.When this point was raised by this court, an observation was made on 18/02/2022 stating that the petitioner has to verify as to whether the property that was settled in lieu of maintenance, has been handed over to the respondent. Similarly, the learned counsel appearing for the respondent was also directed to file an affidavit stating that the respondent will not claim any property. In pursuance of the above said direction, both the parties submitted that in respect of the above said property, a suit in O.S.No.57 of



2012 was filed before the Additional District Munsif, Trichy and that was decreed in favour of the daughter and son of the petitioner herein. Against which, the husband of the petitioner, preferred appeal and the same is pending before this court. Subsequently, it was submitted that the matter could not be settled in view of the further development.

9. Now it is seen that the petitioner has been deprived of her right to derive the income from the property, originally settled. Further development must be taken into account.

10. The CrI.RC No.94 of 2013 was passed on the ground that no proof was filed by the petitioner to the effect that the property was already granted to her, was taken back. It was the allegation before the revisional court that the revisional court, after settlement of the property in her favour, but later the husband takes back the property and settled the same in his sister name. Finding that no proof was filed, the revision was allowed on the ground that the wife is capable of maintaining herself. The property, which was originally settled has been taken back automatically.

11. As mentioned earlier, the petitioner has deprived of her income. In the absence of any proof to the effect that the petitioner is deriving income from some other source, her right to claim maintenance from the respondent cannot be denied.

12. The learned counsel appearing for the respondent would rely upon the affidavit, that has been filed to the effect that the petitioner herself has admitted that she is doing coolie work and she is also capable of continuing the same.

13. Such sort of contention cannot be accepted, unless the respondent is able to sustain his plea that the petitioner is not entitled for maintenance on valid ground, that cannot be denied. It has also been brought to the notice of this court that after the trouble arose between the parties, the respondent got married some other lady and having three children. Properties have been settled in their name by the respondent, but the petitioner is having two children and they got to be married.

14. In view of the above said circumstances, I am of the considered view that the respondent is bound to maintain the petitioner, which was rightly held by the trial court. So the order passed by the trial court is liable to be restored, by setting aside the order passed by the revisional court. The respondent is directed to pay maintenance as per the order passed by the trial court from the date of the filing of the maintenance petition.



15. In the result, this criminal original petition is **allowed**. The impugned order passed by the Principal Sessions Judge, Trichy, made in CrI.RC No.94 of 2013 dated 24/02/2014 is set aside, confirming the order in MC No.21 of 2012 passed by the Judicial Magistrate, Manapparai, dated 23/07/2013. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(P & A)

// True Copy //

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Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

1.The Principal Sessions Judge,
Trichy.

2.The Judicial Magistrate,
Manapparai, Trichy District.

+1 CC to M/s.R.PONKARTHIKEYAN, Advocate (SR-22781[F] dated 29/04/2022)

**CrI.OP(MD)No.5462 of 2019
29.04.2022**

kg(CO)

TR(10.06.2022) 4P 4C