



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P. (MD)No.8387 of 2019

and

Crl.MP (MD)No.5232 of 2019

WEB COPY

Ahamed Hussain

: Petitioner

Vs.

1.Shahin Parveen

2.Minor Adhil Fahim

rep by his mother,

1st respondent

: Respondents

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in Crl.RP No.37 of 2018, dated 07/03/2019 on the file of the Additional District and Sessions Judge (Fast Track), Kumbakonam, confirming the order in MC No.2 of 2016, dated 27/04/2018 passed by the Chief Judicial Magistrate, Thanjavur in Kumbakonam and set aside the same.

For Petitioner : M/s.M.Maria Vinola

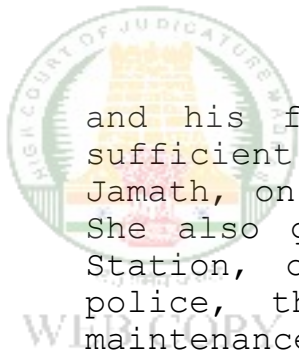
For Respondents : Mr.T.R.Subramanian
(Legal Aid Counsel) for R1

ORDER

This petition has been filed seeking in order to set aside the order passed in Crl.RP No.37 of 2018, dated 07/03/2019 by the Additional District and Sessions Judge (Fast Track), Kumbakonam, confirming the order passed by the Chief Judicial Magistrate, Thanjavur in Kumbakonam, in MC No.2 of 2016, dated 27/04/2018.

2.The case of the prosecution in brief:-

It is a case of matrimonial dispute and the subsequent proceedings seeking maintenance by the wife against her husband. The marriage between the parties took place, on 10/04/2005 as per the Islamic Shariat rites. After the marriage, they begotten a male child. During the marriage, she was provided with sufficient sridhana, jewels etc. They were living as husband and wife about two years. During that period, the husband was not attending his work properly and also drunkard. The sisters of the husband were also staying with her and also caused trouble. Later, they started living separately in the upstairs portion of the house. On 29/06/2007, at about 8.00 pm, she was driven out of the house. After that on 09/09/2007, as mentioned above, a male child was born. The husband



and his family members did not visit the child. After waiting sufficient time, she sent a complaint to the Abivirutheeswaram Jamath, on 23/02/2009, but the husband did not concede for reunion. She also gave a complaint before the Kumbakonam All Women Police Station, on 13/10/2010. In spite of proper advise given by the police, the husband did not take care for reunion. Seeking maintenance amount, she moved the criminal court namely the Chief Judicial Magistrate, Kumbakonam and after enquiry, that was allowed directing the husband to pay a sum of Rs.5,000/- to her and Rs.7,000/- to the child. Challenging the same, the husband filed Cr.RP No.37 of 2018 before the Additional District & Sessions Judge, (Fast Track), Kumbakonam, That was dismissed. Against which, this criminal original petition has been filed.

3.Heard both sides.

4.At the outset, the learned counsel appearing for the respondents would submit that this criminal original petition is not at all maintainable, since already the petitioner exercised the right of revision before the Additional District & Sessions Court, Kumbakonam. So against which, this criminal original petition has been filed, which amounts to second revision, which is not permissible under law.

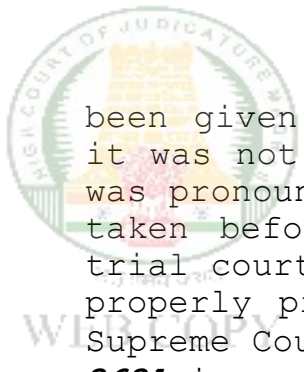
5.No doubt, the second revision is not maintainable in the form of a petition filed under section 482 Cr.P.C. But since the matrimonial issue is between the husband and wife, for the purpose of exploring the possibility of settlement, steps were taken. But in spite of the matter was referred to Medication, it could not succeed. So, the matter was heard on merits.

6.The petitioner was ready for one time settlement. But that was not accepted by the respondents.

7.It appears that because of the dispute of quantum of maintenance amount, this matter has been kept pending for all these years. Even though, stringent order has been passed by this court, directing the petitioner to pay a sum of Rs.2.50 lakhs towards arrears amount, after much delay only, that amount was also paid. So, with these background in mind, let us go to the disputed issue.

8.The learned counsel appearing for the petitioner would submit that the petitioner pronounced triple talaq. So the petition under section 125 Cr.P.C is not maintainable.

9.The second contention is that the income of the petitioner was not proved in the trial court and he is working only as a coolie. Regarding the contention that the petitioner has pronounced triple talaq and as such, the petition under section 125 Cr.P.C is maintainable, is not at all acceptable. As per the provisions of the



been given to the parties to exercise their willingness. But here, it was not proved before enquiry officer that the triple talaq that was pronounced by the petitioner was a valid one. The same view was taken before the trial court. So after elaborate discussion, the trial court has come to the conclusion that the triple talaq was not properly proved. He also relied upon the judgment of the Hon'ble Supreme Court in the case of **Shamim Ara Vs. State of U.P [2003(1) LW 363]** in support of his contention.

10.Since the factual finding has been rendered by the trial court, this court by exercising the jurisdiction under section 482 Cr.P.C cannot go into other aspects. It was also notified that petition was filed in 2014 before the Principal District Munsif Court, Kumbakonam seeking declaration to dissolve the marriage between the parties. So that was pleaded by the petitioner was not accepted. So recording the earning capacity also, the trial court has come to the conclusion that the petitioner was able bodied and capacity of earning sufficient income, who is working as 'dish antenna fixer'. So considering all those aspects only, the trial court has awarded the maintenance amount, which was also confirmed by the revisional court.

11.When we go through the order passed by both the trial court as well as the revisional court, it is seen that it completely agreed with the findings of the trial court. The revisional court has also found that tripe talaq would not have been pronounced as stated by the petitioner on 25/11/2010. But in the plaint, he has stated that the wife left the matrimonial house in December 2011. So on that ground also, pronouncement of triple talaq was disbelieved. So after due consideration thought it fit to direct the husband to provide maintenance to the wife and child. The concurrent findings of the trial court as well as the revisional court, the very same ground cannot be taken before this court without any valid reason. So, this petition is not at all maintainable and accordingly, it is liable to be dismissed.

12.In the result, this criminal original petition is **dismissed**, confirming the order passed by the trial court as well as the revisional court. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(T & P)

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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 Additional District & Sessions Judge,
(Fast Track), Kumbakonam.

2.The Chief Judicial Magistrate,
Thanjavur District at Kumbakonam.

+1 CC to M/s.T.R.SUBRAMANIAN, Advocate (SR-13327[F] dated 22/03/2022)

+1 CC to M/s.M.MARIA VINOLA, Advocate (SR-13403[F] dated 22/03/2022)

Crl.O.P. (MD)No.8387 of 2019
21/03/2022

ss (CO)
TR(04.05.2022) 4P 5C