



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.01.2022

Delivered on : 20.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P. (MD)No.11058 of 2019

and

Crl.M.P. (MD)No.6955 of 2019

Murugan

... Petitioner/Petitioner/
Respondent

vs.

Ramalakshmi

... Respondent/ Respondent/
Petitioner

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records and set aside the order passed in Crl.R.C.No.18 of 2017 on the file of the II Additional District and Sessions Judge, Thoothukudi dated 06.12.2017 confirming the order passed in M.C.No.14 of 2015 on the file of the Chief Judicial Magistrate, Thoothukudi dated 02.03.2017.

For Petitioner : Mr.P.Banu Prasath

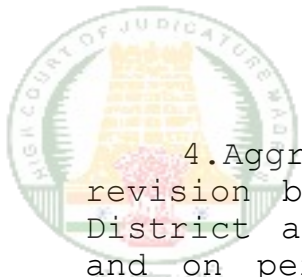
For Respondent : Mr.PM.Vishnuvarthanan

O R D E R

This Criminal Original Petition is directed against the order passed in Crl.R.C.No.18 of 2017 dated 06.12.2017 on the file of the learned II Additional District and Sessions Judge, Thoothukudi, confirming the order passed in M.C.No.14 of 2015 dated 02.03.2017 on the file of the learned Chief Judicial Magistrate, Thoothukudi.

2.The petitioner is the husband and the respondent/wife has filed a petition under Section 125 Cr.P.C. claiming maintenance for herself and her daughters in M.C.No.14 of 2015 on the file of the learned Chief Judicial Magistrate, Thoothukudi.

3.The petitioner has filed a counter statement, opposing the claim of maintenance. The learned Chief Judicial Magistrate, Thoothukudi, after enquiry has passed an order dated 02.03.2017 directing the petitioner herein to pay a sum of Rs.4,000/- as monthly maintenance to the respondent and her daughters from the date of petition and also awarded cost of Rs.3,000/-.



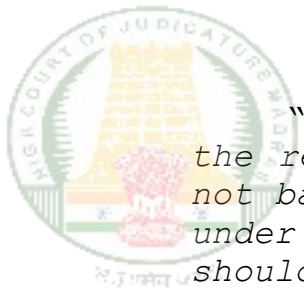
4. Aggrieved by the said order, the petitioner has preferred a revision before the District Court and the learned II Additional District and Sessions Judge, Thoothukudi after hearing both sides and on perusing the materials placed on record, has passed the impugned order dated 06.12.2017 dismissing the revision and thereby confirming the order of maintenance granted by the learned Chief Judicial Magistrate, Thoothukudi. Challenging the order passed in revision, the petitioner invoking under Section 482 Cr.P.C. has come forward with the present criminal original petition.

5. Regarding the maintainability of the present petition under Section 482 Cr.P.C., it is necessary to refer the decision of the Hon'ble Supreme Court in ***Dharampal and others vs. Smt. Ramshri and others*** reported in ***AIR 1993 SC 1361*** and the Hon'ble Apex Court has held as follows:-

"4.....The question that falls for our consideration now is whether the High Court could have utilised the powers under Section 482 of the Code and entertained a second revision application at the instance of the 1st respondent. Admittedly the 1st respondent had preferred a Criminal Application being Cr. R.No. 180/78 to the Sessions Court against the order passed by the Magistrate on 17th October, 1978 withdrawing the attachment. The Sessions Judge had dismissed the said application on 14th May, 1979. Section 397(3) bars a second revision application by the same party. It is now well settled that the inherent powers under Section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. Hence the High Court had clearly erred in entertaining the second revision at the instance of 1st respondent. On this short ground itself, the impugned order of the High Court can be set aside."

6. In another decision, the Hon'ble Apex Court in ***Deepti @ Arati Rai vs. Akhil Rai and others*** reported in ***1995 SCC (5) 751*** has held that second revision application, after dismissal of the first one by Sessions Court is not maintainable and that inherent power under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code.

7. At this juncture, it is also necessary to refer the judgment of the Hon'ble Supreme Court in ***Shri Ganesh Narayan Hegde vs. Shri S. Bangarappa and others*** reported in ***1995 SCC (4) 41*** wherein the Hon'ble Supreme Court has observed that Section 482 of the Code of Criminal Procedure is not a bar for invoking jurisdiction of the High Court if in the given circumstances, it is found to be necessary to prevent abuse of process of Court and the relevant passage is extracted hereunder:-



"12.While it is true that availing of the remedy of the revision to the Sessions Judge under Section 399 does not bar a person from invoking the power of the High Court under Section 482, it is equally true that the High Court should not act as a second Revisional Court under the garb of exercising inherent powers. While exercising its inherent powers in such a matter it must be conscious of the fact that the learned Sessions Judge has declined to exercise his revisory power in the matter. The High Court should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of Court or that the interests of justice otherwise call for quashing of the charges."

8.Considering the above, it is very much clear that the High Court while exercising powers under Section 482 Cr.P.C. can interfere only when it is satisfied that there is abuse of process of Court or that the interest of justice otherwise call for quashing of the proceedings.

9.In the present case, the petitioner has not even attempted to show that the orders passed by the Courts below were abuse of process of Court or that the interests of justice call for quashing of the said orders.

10.In the case on hand, as already pointed out, the learned trial Judge has awarded monthly maintenance of Rs.4,000/- to the respondent and her daughters.

11.It is evident that the petitioner herein has specifically admitted his marriage with the respondent and birth of two daughters.

12.The main contention of the petitioner is that since he is affected with Tuberculosis, the respondent without any sufficient and justifiable reasons had voluntarily left the matrimonial home and she refused to live with the petitioner and that therefore she is not at all entitled to claim any maintenance under Section 125 Cr.P.C. The next contention of the petitioner is that since he has been taking treatment for Tuberculosis, he was not in a position to maintain himself and as such, the award of maintenance of Rs.4,000/- per month is excessive. But the trial Court as well as the Revisional Court have dealt with those aspects elaborately and rightly rejected his contentions.

13.The Courts below have specifically observed that the petitioner after marrying another lady, had a child through her and that the property obtained from his father has been settled by him in favour of the child born through that lady and both the Courts below have rightly commented that the petitioner has not offered any



reason or explanation as to why he had settled the property only in favour of the minor child, when the petitioner is having a living spouse and two daughters.

14.Considering the entire facts and circumstances and the status of the parties and the economics scenario, the maintenance awarded at Rs.4,000/- per month is very much reasonable and the same cannot be said to be excessive.

15.Considering the above, this Court does not find any illegality in the findings recorded by the trial Court and confirmed by the Revisional Court and consequently, this criminal original petition is liable to be dismissed.

16.In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

csm

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 II Additional District & Sessions Judge,
Thoothukudi.

2.The Chief Judicial Magistrate,
Thoothukudi.

+1 CC to M/s.P.BANU PRASATH, Advocate (SR-1941[F] dated 20/01/2022)

+1 CC to M/s.M.VISHNUVARTHANAN, Advocate (SR-1942[F] dated 20/01/2022)

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