



CRL OP(MD). No.16487 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 29/06/2022

Pronounced on : 11.07.2022

CORAM

The Hon`ble Mr.Judtice K.MURALI SHANKAR

CRL OP(MD). No.16487 of 2019

1.Kalaiselvi

2.Minor.Kesavini

3.Minor.Deeparaman

: Petitioners

Vs.

Valmeeki @ Sivakumar

: Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the order, dated 03.07.2019 made in Cr.R.P.No.10 of 2017 on the file of the Principal District and Sessions Judge, Pudukkottai confirming the order, dated 31.01.2017 passed in M.C.No.5 of 2016 on the file of the learend Chief Judicial Magistrate, Pudukkottai and set aside the same.

For Petitioners : Mr.K.C.Maniyarasu,

For Respondent : No Appearance



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ORDER

The Criminal Original Petition has been filed invoking Section 482 of the Code of Criminal Procedure, seeking orders to call for the records relating to the order, dated 03.07.2019 made in Cr.R.P.No.10 of 2017 on the file of the Principal District and Sessions Judge, Pudukkottai confirming the order, dated 31.01.2017 passed in M.C.No.5 of 2016 on the file of the Chief Judicial Magistrate, Pudukkottai and set aside the same.

2.The respondent is the husband of the first petitioner and father of the petitioners 2 and 3.

3.The first petitioner on her behalf and on behalf of her two minor children has filed a petition under Section 125 Cr.P.C, claiming maintenance in M.C.No.5 of 2016 on the file of the Court of the Chief Judicial Magistrate, Pudukkottai. The respondent has filed counter statement, opposing the claim of maintenance. The learned Chief Judicial Magistrate, after enquiry, has passed an order, dated 31.01.2017, directing the respondent to pay monthly maintenance of Rs.2,000/- to the second petitioner and Rs.1,500/- to the third petitioner from the date of petition



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and dismissed the petition as against the first petitioner. Aggrieved by the said order, the petitioners have preferred a revision in Cr.R.P.No.10 of 2017 and the petitioner has also filed a revision in Cr.R.P.No.11 of 2017, challenging the award of maintenance granted to the petitioners 2 and 3.

4.The learned Principal District and Sessions Judge, Pudukkottai, after hearing both sides and on perusing the materials placed on record, has passed the impugned common order, dated 03.07.2019, dismissing the both revision petitions. Challenging the order of dismissal of revisions, the wife and children have come forward with the present criminal revision under Section 482 of Cr.P.C.

5. Generally, the second revision petition, challenging the order passed by the Sessions Court in the first revision cannot be entertained under Section 482 Cr.P.C. The Honourable Supreme Court in ***Shri Ganesh Narayan Hegde vs. Shri S.Bangarappa and others*** reported in ***1995 SCC (4) 41***, has held 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:-



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“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.”

6. As per the dictum of the Honourable Supreme Court, this Court, while exercising power 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 proceedings.

7.In the present case, the petitioners have not even attempted to show that the orders passed by the Courts below are abuse of process of Court or that the interest of justice for quashing of the said orders.



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8.In the case on hand, admittedly, the marriage between the first petitioner and the respondent was solemnized on 24.10.2007 and due to their wed-lock, the petitioners 2 and 3 were born on 21.10.2008 and 17.10.2012 respectively.

9.The learned Chief Judicial Magistrate, after considering the evidence, has rejected the claim of the first petitioner on the ground that she has not proved the desertion on the part of the respondent alleged by the first petitioner, but on the other hand, the respondent has proved that the first petitioner alone had voluntarily left the matrimonial home and was living separately.

10.The learned counsel for the petitioners would submit that since the respondent was Alcoholic, he had been torturing his wife and abusing her mentally and physically, that he had demanded more dowry of Rs.3 lakhs and that only due to harassment of the respondent, she was ventured out from the matrimonial home. He would further submit that the respondent had depicted a story against the first petitioner as if she was



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having extra marital affairs with one Murugesan; that the respondent has miserably failed to prove the said allegation and that the trial Court as well as the revisional Court have accepted the story projected by the respondent without any iota of basis or materials to substantiate the same.

11.It is evident from the records that the main defence of the respondent is that he received a call from an unknown Number : 90901 11382, in the month of October 2015; that the said caller had informed the respondent that the first petitioner had already married him and their illicit affairs was continuing; that the respondent had received many letters from the said person, making allegations against the first petitioner; that when the same was enquired, the first petitioner had refused to respond that thereafter, the respondent has preferred a complaint on 02.12.2015 before the Namanasamuthiram Police Station and only after Police enquiry, he came to know that the anonymous caller and the sender of letters was one Murugesan, who was continuing cardiac treatment at Maruhoor; that when the first petitioner was called for enquiry, she was dodging and thereafter, informing the respondent, she had voluntarily left the matrimonial home in the end of December 2015 along with third petitioner; that though the



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respondent has requested her to return to the matrimonial home through cell phone, and thereafter, directly along with relatives, the first petitioner refused to return to the matrimonial home.

12.It is pertinent to note that the learned Chief Judicial Magistrate has recorded a finding that the evidence of the respondent with respect to the above aspects got corroborated by the evidence of D.W.2 and D.W.3. The learned Chief Judicial Magistrate has further observed that the stand of the first petitioner that she was forcibly sent out the matrimonial home, was not at all proved and she was taking inconsistent stand with regard to leaving the matrimonial home.

13.It is further evident that the respondent has taken steps for reunion through Legal Services Authority, but the first petitioner had refused for reunion. It is also not in dispute that the respondent has filed a petition for restitution of conjugal rights in H.M.O.P.No.260 of 2016 and the same is pending on the file of the Sub Court, Pudukkottai.



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14.No doubt, the first petitioner has given evidence that her grievance was not heard by the Panchayathars and she was directed to live with the respondent bearing all the harassments, but as rightly observed by the learned Sessions Judge, the first petitioner has failed to prove that she was harassed by the respondent.

15.As rightly observed by the Courts below, though the first petitioner and the respondent were living without any big issue till 2015, subsequently, there was a storm in the family through unanimous caller, who was latter identified as Maruhoor Murugesan and according to him, he was having affairs with the first petitioner.

16.No doubt, the said factum of illicit affairs was not proved, but the fact remains that the first petitioner has not cooperated with the Police for enquiry with regard to the complaint lodged by the respondent against the said Murugesan. As rightly observed by the Courts below, the first petitioner without responding to the said issue, in December 2015 had left the matrimonial home voluntarily by taking her second child/the third petitioner to her parental home.



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17.It is pertinent to note that the trial Court as well as the revisional Court have given a specific finding that the first petitioner was not thrown out of the matrimonial home forcibly by the respondent. But on the other hand, she had left the matrimonial home without any reason or ground and as such, the respondent cannot be found fault with for the separation between the parties.

18.The learned District Judge has specifically observed that since the first petitioner was at fault for leaving the matrimonial home without any reason, the question of deciding as to whether she is having sufficient means to maintaining herself does not arise at all.

19.The learned counsel for the petitioner would contend that the maintenance amount awarded to the petitioners 2 and 3 are very low and the same is insufficient in the present economical scenario and that therefore, the same has to enhanced.

20.The learned Chief Judicial Magistrate, after considering the evidence adduced by both the parties, has fixed the monthly maintenance



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at Rs.2,000,- to the second petitioner and Rs.1,500/- to the third petitioner and the same was also confirmed by the revisional Court. Hence, this Court while exercising the jurisdiction under Section 482 Cr.P.C, is not inclined to go into the quantum of maintenance awarded. Moreover, the petitioners are very much entitled to approach the trial Court for enhancement under Section 127 Cr.P.C.

21.Considering the above, this Court does not find any illegality in the finding recorded by the trial Court, which was confirmed by the revisional Court. Hence, this Court concludes that the Criminal Original Petition is devoid of merits, is liable to be dismissed.

22.In the result, the Criminal Original Petition is dismissed.

11.07.2022

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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 District and Sessions Judge,
Pudukkottai.
- 2.The Chief Judicial Magistrate,
Pudukkottai.



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K.MURALI SHANKAR,J

das

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Date : 11/07/2022