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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.03.2023

Pronounced on : 29.03.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.844 of 2021

and

Crl.M.P.No.516 of 2021

1.S.Suresh Babu

2.S.Balamurugan ... Petitioners

Vs.

Sundararajan ... Respondent

PRAYER: Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for the records in M.C.No.2 of 2019 on the file of the Family Court, Chengalpattu and quash the same.

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For Petitioners : Mr.R.Singaravelan
Senior Counsel
For Mr.M.Rajamani

For Respondent : Mr.S.N.Ravikumar

O R D E R

The petition seeks quashing of the proceedings initiated under Section 125 of Criminal Procedure Code, 1973 against the petitioners herein by their father claiming maintenance from them.

2.The respondent had filed a petition under Section 125 Cr.P.C before the Family Court, Chengalpattu stating that the petitioners sare his sons; that he is unable to maintain himself; that he approached the petitioners for financial support; that the petitioners are well to do and have a duty to maintain the respondent; and that they refused to maintain the respondent. The respondent hence, prayed for a monthly maintenance of Rs.30,000/- from the first petitioner and Rs.20,000/- from the second petitioner.

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3.Mr.R.Singaravelan, the learned Senior Counsel for the petitioners/sons of the respondent submitted that the respondent's petition is not bonafide; that he had abandoned the mother of the petitioners and obtained a decree of divorce ex-parte on 12.12.2006; that the respondent never took care of the petitioners or their mother; and that the petitioners were under the care of their mother and were brought up with the financial support of the maternal Grandmother. The learned Senior Counsel would further submit that the petitioners as children never met their father and met him only in Court when he claimed maintenance from them; that after getting divorce, the respondent married another lady and gave birth to a son by name Kannappan. He further submitted that the respondent is well to do and his claim that he was unable to maintain himself is false since he is running a cable TV business and earning more than Rs.50,000/- per month; that he is happily living with his second wife; and that suppressing the fact of divorce and the subsequent marriage, he has filed this petition only to harass the petitioners.

4.The learned counsel for the respondent/father would submit that the points raised by the petitioners are factual in nature. The claim made by the petitioners that the respondent has suppressed certain facts in order to maintain the petition

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under Section 125 of Cr.P.C has to be only adjudicated in a trial. In any event, the respondent does not have any means and the petitioners are well to do and have a duty to maintain the respondent irrespective of whether he had divorced their mother. He submitted that this provision is to enforce a social obligation. The proceedings are civil in nature and cannot be quashed by invoking Section 482 Cr.P.C. The learned counsel relied upon the Judgments of the Hon'ble Supreme Court in ***AIR 1987 SC 1100 (Dr.Mrs.Vijaya Manohar Arbat vs. Kashirao Rajaram Sawai and another)*** and ***(2014) 1 SCC 188 (Badshah vs. Urmila Badshah Godse and another).***

5.Heard Mr.R.Singaravelan, the learned Senior Counsel for the petitioners and Mr.S.N.Ravikumar, the learned Counsel for the respondent.

6.It is seen that the respondent/father filed a maintenance petition under Section 125 of Cr.P.C., against the petitioners who are admittedly his sons. Section 125 of Cr.P.C., provides that the learned Magistrate may upon proof of neglect or refusal to maintain can direct the son to pay maintenance to the father provided the father is unable to maintain himself. The main grounds raised by the petitioners

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are that the petition under Section 125 Cr.P.C suffers from suppression of facts as the respondent had not disclosed the fact of divorce with the mother of the petitioners, the subsequent marriage with another lady and that he was running a cable TV network. The question whether the respondent is unable to maintain himself is factual and cannot be decided in this petition. Likewise, the question whether he would be disentitled to claim maintenance on account of suppression of divorce proceedings between the respondent the petitioners' mother and the subsequent marriage also has to be adjudicated only by the trial Court.

7. Hence, these issues cannot be decided in a petition under Section 482 Cr.P.C. It is for the learned Magistrate to decide these issues based on the pleadings and the evidence let in before him. Hence, this Court is not inclined to entertain this quash petition under Section 482 Cr.P.C. The learned Magistrate may consider all the issues without being influenced by any of the observations made in this order.

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8.With the above observations, this Criminal Original Petition stands dismissed. Consequently the connected miscellaneous petition is closed.

29.03.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation :Yes/No
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To

The Family Court,

Chengalpattu.

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SUNDER MOHAN. J,

dk

Pre Delivery Order in

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