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Crl.A.No.1335 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.1335 of 2023

Raja Suresh

... appellant

Vs.

Vedavalli

... Respondent

Prayer: Criminal Appeal filed under Section 341 of Criminal Procedure Code, to set aside the order dated 07.10.2023 passed by the Additional Mahila Court (Magistrate Level), Tiruvarur in Crl.M.P.No.353 of 2023 in D.V.No.4 of 2022, by taking action against the Respondent for the offence under Sections 191, 193, 199 and 209 Cr.P.C.

For Appellant : Mr.G.Mohana Krishnan

ORDER

This Criminal Appeal has been filed to set aside the impugned order, dated 07.10.2023 in Crl.M.P.No.353 of 2023 passed by the learned Judicial Magistrate, Additional Mahila Court (Magistrate Level), Tiruvarur.

2.The appellant is the estranged husband of the respondent, they have proceedings before the learned Judicial Magistrate, Additional Mahila Court (Magistrate Level), Tiruvarur in D.V.C.No.4 of 2022. In the said



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proceedings, the respondent estranged wife of the appellant filed assets and liabilities affidavit, dated 17.04.2023, based on which, the respondent filed the interim maintenance petition in Crl.M.P.No.51 of 2023 in D.V.C.No.4 of 2022. According to the appellant, the said affidavit filed by the respondent is with false information, hence, the appellant filed a petition in Crl.M.P.No.353 of 2023 under Section 340 Cr.P.C., before the learned Judicial Magistrate, Additional Mahila Court (Magistrate Level), Tiruvarur to prosecute the respondent for offence under Sections 191, 193 & 199 of IPC. The learned Magistrate *vide* order, dated 07.10.2023 dismissed the petition, against which, the present Criminal Appeal is filed.

3.The learned counsel for the appellant submitted that while rejecting the petition, the lower Court failed to see the object of Section 340 Cr.P.C., which is to ascertain whether any offence affecting the administration of justice has been committed in relation to any proceedings before or any document produced in evidence in Court. Further, for initiation of proceedings under Section 340 Cr.P.C., two pre-conditions are there, firstly, the material produced before the Court must establish a *prima facie* case for



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a complainant for inquiry into an offence referred to in clause(b)(i) of Sub-Section (1) of Section 195 Cr.P.C. Secondly, it is expedient in the interest of justice that an inquiry should be made into the alleged offence. The lower Court without considering the importance of the same, had dismissed the petition for the reason that the interim maintenance application in Crl.M.P.No.51 of 2023 in D.V.C.No.4 of 2022 has been allowed by order, dated 09.05.2023 and the appellant was directed to pay the monthly maintenance of Rs.10,000/- to the respondent and the present petition under Section 340 Cr.P.C., has been filed by the appellant belatedly on 02.06.2023. Since Crl.M.P.No.51 of 2023 in D.V.C.No.4 of 2022 has already disposed, the lower Court was not inclined to entertain the petition under Section 340 Cr.P.C. It is further submitted that the lower Court on coming to knowledge that the false affidavit has been filed, an enquiry should have been made against the respondent in the interest of justice. Further, effective and stern action is required to be taken for preventing the evil of perjury and people who daringly make false statements to mislead the Court and to obtain the orders. The lower Court *suo motu* ought to have taken the complaint on file, but failed to make any preliminary enquiry and



thereafter, coming to the conclusion merely on the ground that already order has been passed in CrI.M.P.No.51 of 2023 in D.V.C.No.4 of 2022, dismissed the petition, is not proper.

4.The learned counsel for the appellant raised very many grounds in the present Criminal Appeal, thereafter, this Court reminded the learned counsel for the appellant that any appeal against Section 340 Cr.P.C., ought to be filed under Section 341 Cr.P.C., before the Court to which such former Court is subordinate within the meaning of sub-section 4 of Section 195 and thereafter, the Superior Court may thereon after notice to the parties concerned might take appropriate action.

5.At this juncture, the learned counsel for the appellant sought permission of this Court to withdraw the present Criminal Appeal and to file it before the appropriate Court. The only apprehension of the appellant is that the concerned Court might raise objection with regard to limitation since the impugned order passed on 07.10.2023.



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6.In view of the same, this Court directs the Registry to return the impugned order, dated 07.10.2023 passed in Crl.M.P.No.353 of 2023 to the appellant enabling him to file it before the appropriate appellate Court.

7.In view of the appellant wrongly approached this Court, the concerned lower appellate Court not to raise objection with regard to the point of limitation and take the appeal on file if it is otherwise in order and proceed accordingly. The appellant is directed to file the appeal within thirty days from the date of receipt of a copy of this order and case papers from the Registry.

8.With the above observations, this Criminal Appeal stands dismissed.

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Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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M.NIRMAL KUMAR, J.

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To

The Additional Mahila Court (Magistrate Level),
Tiruvarur.

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