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Crl.O.P.No.27761 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.27761 of 2023

Arun Amalan

... Petitioner

Vs.

1. A.Santha Devi

2. A.Dev Prasad

...Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order dated 20.06.2023 made in C.M.P.No.876 of 2022 in M.C.No.15 of 2015 on the file of the learned Judicial Magistrate Court, Ambattur.

For Petitioner : Mr.D.Ramesh Kumar

ORDER

Husband, who is the respondent in M.C.No. 15 of 2015, which is pending from the year 2015, after completion of cross examination of the petitioner had taken out an application to recall her for further Cross Examination. Petition filed under Section 311 of Cr.P.C., been dismissed by the learned Judicial Magistrate. Petitioner states that, there is a suppression



by the respondent regarding Income and therefore, in this regard, she has to be recalled and cross-examined. However, trial Court after hearing both sides, held that summoning the Principal, College of Education, Mangalam Teacher Training Institute and production of records pertaining to the service and salary details of the respondent is not required, since, Maintenance Case was filed in the year 2015 and the case has reached its final stage after completion of recording the testimony of witnesses. The respondent had already filed her assets and liability statement and her alleged employment was only temporary, therefore, witnesses and documents now sort to be summoned is not required.

2. The learned counsel appearing for the petitioner submitted that, only after eliciting the facts from the respondent and from her employment details, he came to know about the gainful employment of the petitioner in Mangalam College of Education, Mangalam Teacher Training Institute and had been paid a salary of Rs.50,000/- as salary.

3. It is the contention of the learned counsel for the petitioner that, the respondent A.Santhadevi, M.A., M.Ed., graduate working as Assistant



Professor in Mangalam College of Education, Mangalam Teacher Training Institute earning about Rs.50,000/- as salary. However, suppressing the said facts, she seeks to get maintenance, as if she has no source to maintain herself.

4. The records however of the case unravels that, marriage between the petitioner and the respondent took place in the year 2009 and due to incompatibility and other reasons, H.M.O.P.No.84 of 2014 filed by the petitioner herein before the learned Sub Court, Sankarankol for divorce. The respondent had, on 09.10.2015, filed petition under Section 125 of Cr.P.C., been filed before the learned Judicial Magistrate, Ambattur for maintenance and the same is pending for the past eight years. The Respondent, who is the petitioner in the maintenance case, on her behalf and minor son had filed proof affidavit in lieu of the chief examination as early on 15 April 2018 and she had been cross-examined by the petitioner on 29.11. 2019. The petitioner has filed recall petition under Section 311 of Cr.P.C., taking advantage of some change of circumstances long after filing Maintenance Case Petition. This petition cannot be entertained, after the witnesses been cross-examined nearly four years ago.



5. Also, his Court finds no reason to interfere the order of the learned Judicial Magistrate dismissing the petition under Section 311 of Cr.P.C., to summon the additional witnesses to speak about the event which is subsequent to filing of maintenance case.

6. The chapter IX of Cr.P.C., is meant for providing immediate financial protection for wife, children and parents, who are neglected or refused to maintain. Here, it is a case where wife and a minor son has sought for maintenance 8 years ago. But that petition is still pending for the reason best known. The code provides maintenance fixed which can be any time altered, modified or withdrawn in any event which requires such interference. This Court does not find any such thing in this case. Just because, case being prolonged for eight years, petitioner herein cannot take advantage of the some change of event and delay the process. Hence, petition challenging the order of the learned Judicial Magistrate, Alandur dated 20.06.2023 in C.M.P.No.876 of 2022 is dismissed. Therefore, the trial Court is directed to dispose the maintenance case in M.C.No.15 of 2015 within a period of four weeks from the date of receipt of copy of the order.



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7. Accordingly, this Criminal Original Petition is dismissed.

Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Neutral Citation : Yes/No

Sma

To:

Judicial Magistrate Court, Ambattur

Dr.G.JAYACHANDRAN,J.



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