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Crl.OP.No.15579 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.No.15579 of 2024

Dahila

Minor represented by her
natural guardian and mother
Premalatha Rajendran

... Petitioner

Vs.

Didymus Dmonte

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the return docket order dated 03.05.2024 in the unnumbered M.C.No. Of 2024 on the file of the District Munsif-Cum-Judicial Magistrate Court, Sholinganallur. Consequently, direct the District Munsif-Cum-Judicial Magistrate Court, Sholinganallur to take on file the unnumbered M.C.No. 2024 filed by petitioner on 27.03.2024.

For Petitioner : Mr.K.Shakthivel

ORDER

When the marriage between Premalatha and Rajendran dissolved by mutual consent and divorce decree been passed by the Family Court



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on 17.08.2022. As per the terms of compromise, immovable property has been settled in favour of petitioner's mother and the petitioner's father has also agreed to pay a lump sum of Rs.25,000/- per year for the educational expenses of the petitioner/minor daughter.

2. The petition has been filed by the petitioner/minor daughter through her mother under Section 125 of Cr.P.C before the learned Judicial Magistrate, Sholinganallur seeking enhancement of maintenance. The said petition was returned by the learned Judicial Magistrate, stating that while granting divorce, maintenance to the child also been fixed and therefore, fresh application under Section 125 of Cr.P.C is not maintainable. Being aggrieved, the present petition is filed to set aside the docket order and direct the learned Judicial Magistrate, Sholinganallur, to entertain the petition filed under Section 125 of Cr.P.C.

3. The learned counsel appearing for the petitioner submits that the right of the minor child is independent that of the right to the wife and minor child can seek for additional maintenance at any point of time. The Judicial Magistrate has failed to take note of the fact that the minor child cannot be deprived of her lawful claim of maintenance just because



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her mother had entered into compromise and obtained decree of divorce by mutual consent besides permanent alimony.

4. This Court though agree with the counsel for the petitioner that the minor child is entitled to seek for additional maintenance, in view of the change in circumstances, but, such plea has to be raised before the Family Court which has granted divorce and permanent alimony including maintenance to the minor child. She cannot independently filed a petition before the Magisterial Court situated in the different territorial jurisdictions and seek for independent adjudication of the issue. Hence, this Court finds no error in the order of the Judicial Magistrate, Sholinganallur returning the application filed under Section 125 of Cr.P.C.

5. The petitioner shall move the Family Court (I Additional Family Court, Chennai) which has decided the dispute between the parents of the minor child in O.P.No.1180 of 2022 and had dissolved the marriage including grant of permanent alimony and maintenance for both the wife as well the child.

6. Accordingly, this Criminal Original Petition is dismissed with



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the above direction.

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Vv

To

1. The District Munsif-Cum-Judicial Magistrate Court,
Sholinganallur
2. The Public Prosecutor,
High Court of Madras, Chennai.

Dr.G.JAYACHANDRAN,J.



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