



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P Nos.28695 and 28700 of 2023
and Crl.MP.Nos.19952 and 19954 of 2023

K.Sivakumar

... Petitioner
in Both Crl.OPs

.VS.

Padmavathy

.. Respondent
in Both Crl.OPs

COMMON PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records of the learned Judicial Magistrate No.I, Udumalaipettai in Crl.MP.Nos.4968 and 4969 of 2023 in MC.No.9 of 2016 dated 5.10.2023 and set aside the same.

For Petitioner : Mrs.S.Jothivani
(Both Crl.OPs)

For Respondent : Mr.N.K.Ponraj
(Both Crl.OPs)



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COMMON ORDER

The petitioner has filed these criminal original petitions challenging the common order passed by the learned Judicial Magistrate No.I, Udumalpet in CrI.MP.No.4968 and 4969 of 2023, dated 5.10.2023, dismissing the applications filed under Section 91 Cr.PC, and Section 311 Cr.PC.

2.Heard Mrs.S.Jothivani, learned counsel for the petitioner and Mr.N.K.Ponraj, learned counsel for the respondent.

3.The respondent/wife filed a maintenance case before the Court below against the petitioner claiming for a monthly maintenance of a sum of Rs.10,000/-. The respondent examined herself as PW-1 and the evidence on the side of the respondent was completed. The case was at the stage of recording evidence on the side of the petitioner. The petitioner filed two applications. The first application was filed in CrI.MP.No.4968 of 203 under Section 311 Cr.PC to recall PW.1 for further cross examination. That part, the petitioner also wanted to examine two more witnesses viz., the Manager of Akkammal Textiles and the Tahsildar of Madathukulam Taluk. The petitioner also filed an application under Section 91 Cr.PC in CrI.MP.No.4969 of 2023 for a direction to the Manager of Akkammal Textiles to produce the salary certificate of the respondent. The petitioner also sought for a further direction to the Tahsildar to produce the voters list of the year 2016.



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4.The Court below on considering these applications found that the same lacks any merits and accordingly, both the applications were dismissed. Aggrieved by the same, these criminal original petitions have been filed before this Court.

5.The petitioner wanted to establish that the respondent was living with another person in a different place and to establish the same, the petitioner had sought for the voters list. In the considered view of this Court, the examination of the Tahsildar and the production of the voters list are irrelevant in this case since the petitioner did not even take a stand in the main case that the respondent/wife is living in adultery. Therefore, the petitioner cannot be permitted to come up with a new case. To that extent, the Order passed by the Court below deserves to be sustained.

6.The other claim made by the petitioner is that the respondent is employed at Akkammal Textiles and she is paid monthly salary and to establish the same, the petitioner wanted to examine the Manager of Akkammal Textiles and to direct him to produce the salary certificate.

7.The respondent/wife had taken a stand that she was only a daily wage earner in the said Akkammal Textiles and she was not a regular employee in this Textile Shop.



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8.The very fact that the respondent was working in Akkammal Textiles, will not disentitle her from claiming for maintenance. Ultimately, the respondent has to take care of her livelihood and therefore, she can go for a job to sustain herself. However, what was earned by the respondent as a salary or as daily wages requires consideration while fixing the final maintenance amount that is payable by the petitioner to the respondent. To that limited extent, the examination of the Manager of Akkammal Textiles can be permitted.

9.In view of the above, the petitioner will be permitted to examine the Manager of Akkammal Textiles as one of the witness in order to ascertain the status of the respondent in that textile shop and the nature of earning of the respondent. The examination of this witness will be confined only to this extent. The Order passed by the Court below by rejecting this claim also, requires the interference of this Court.

10.In the light of the above discussion, the order passed by the Court below is partially modified. The witness summon shall be issued on the Manager of Akkammal Textiles and he shall be examined in the Court to ascertain the status of the respondent/wife in the Textile Shop and the nature of earnings of the respondent/wife. The Court below is directed to complete the proceedings and pass final orders in MC.No.9 of 2016, within a period of eight weeks from the date of



receipt of a copy of this order. A compliance report shall also be filed before this Court after completion of the proceedings.

11. These criminal original petitions are disposed of in the above terms.

Consequently, connected miscellaneous petitions are closed.

03.01.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
KP

To
Judicial Magistrate No.I,
Udumalaipettai.



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N. ANAND VENKATESH., J
KP

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