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Crl.O.P.No.4718 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.4718 of 2025

Dr.Senthilkumar

... Petitioner

Vs.

D.Kavitha

... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the docket order passed by the learned Judicial Magistrate No.I, Tiruppur in Unnumbered Crl.M.P. of 2024 in M.C.No.03 of 2022 dated 07.12.2024 and direct the learned Judicial Magistrate No.I, Tiruppur, to entertain and adjudicate the petition filed under Section 125(5) of Cr.P.C.

For Petitioner : Mr. S.K.D.Rajasekar

ORDER

This Criminal Original Petition has been filed challenging the order of rejection of the petition filed under Section 125(5) of the Cr.P.C.

2. Heard the learned counsel for the petitioner and perused the



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materials placed on record.

3. The petitioner is the husband of the respondent. After they got married and thereafter, they got separated due to a misunderstanding. Thereafter, the respondent did not turn up to the matrimonial home. Therefore, the petitioner filed a petition for restitution of conjugal rights in HMOP No. 99 of 2012 on the file of the Sub Court, Tiruppur.

4. While that being so, the respondent filed a petition for maintenance in M.C. No. 2 of 2017 and also filed a complaint under the Domestic Violence Act in D.V.A. No. 2 of 2017. The trial Court ordered maintenance of Rs.10,000/- payable by the petitioner in favour of the respondent and a sum of Rs.15,000/- to their daughter. Therefore, the petitioner filed a petition under Section 125(5) of Cr.P.C. However, the learned Judicial Magistrate-I, Tiruppur, without even numbering the same, returned the petition on the ground that the learned Magistrate has no power to entertain the said petition.

5. It is relevant to extract the provision under Section 125(5) of the



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Cr.P.C., as follows:-

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125. Order for maintenance of wives, children and parents-

.....

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.”

Therefore, the learned Magistrate has got power to entertain the petition under Section 125 (5) of Cr.P.C.

6. In view of the above, the petitioner is directed to re-present the petition before the learned Judicial Magistrate-I, Tiruppur. On receipt of the same, the learned Judicial Magistrate-I, Tiruppur, is directed to take the petition on file and pass orders on merits and in accordance with law.

7. With the above observations, this Criminal Original Petition is



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allowed.
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Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

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Note: Registry is directed to return the impugned order under written acknowledgment after retaining a copy of the same for record.

To

1. The Judicial Magistrate No.I, Tiruppur



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G.K.ILANTHIRAIYAN, J.
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