



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.No.84 of 2019

and

Crl.M.P.No.104 of 2019

E.M.Saravanan

...Petitioner/Respondent

Versus

1. Lalitha

2. Selvi

3. Minor S.Ajith

...Respondents/Petitioners

Prayer: This Criminal Original Petition had been filed under Section 482 of Criminal Procedure Code to set aside the order dated 24.09.2018 in Crl.R.C.No.17 of 2018 on the file of First Additional District and Sessions Court, Coimbatore, conforming the order dated 05.01.2018 in M.C.No.15 of 2015 on the file of Judicial Magistrate No.II, Pollachi.

For Petitioner : Mr.K.Sudhakar

For Respondents : Mr.M.N.Balakrishnan

ORDER

This Criminal Original Petition had been filed seeking to set aside the order dated 24.09.2018 in Crl.R.C.No.17 of 2018 on the file of the learned First Additional District and Sessions Court, Coimbatore, confirming the order dated 05.01.2018 in M.C.No.15 of 2015 on the file of Judicial Magistrate No.II, Pollachi.

2. The learned Counsel for the Petitioner had already submitted his arguments on 04.04.2022. Today, the case is posted to hear the learned Counsel for the Respondents. The learned Counsel for the Respondents submits that the minor children had attained majority and therefore he is not seeking relief of maintenance against the minor children. He is seeking relief only against the Respondent/wife. The learned Counsel for the Petitioner submitted the ruling of this High



Court reported in the case of "Vijayakumar Vs Shanmuga Vadivu and others", for the claim of maintenance of the children. Since the learned Counsel for the Respondents had submitted that he is not insisting for the maintenance of the minor Children who had attained the age of majority, the reliance placed by the learned Counsel for the Petitioner herein has no bearing on this case. On appreciation of evidence, the learned Judicial Magistrate No.II, Pollachi had rejected the contention of the learned Counsel for the Respondent/husband therein that the wife refused to live with him as she was having an illegal affair.

3. This Court, exercising extraordinary powers under Section 482 Cr.P.C cannot appreciate the evidence, namely, exercise by the Appellate Court. This petition is filed by the Petitioner/husband seeking to set aside the order of the learned Judicial Magistrate No.II, Pollachi, passed in M.C.No.15 of 15. Based on the guidelines issued by the Hon'ble Supreme Court of India in the case of "State of Haryana Vs. Bhajan Lal", the guidelines issued to the High Court is that the extraordinary powers available to the High Court under Section 482 Cr.P.C shall not be exercised leniently. Only in the cases where there are no materials found from the case of the prosecution, the High Court can exercise the powers sparingly to quash the FIR, to quash the Charge sheet, to quash the Criminal complaint. This is the petition to set aside the order passed by the learned Judicial Magistrate No.II, Pollachi, regarding the claim of maintenance, which was allowed by the learned Judicial Magistrate No.II, Pollachi, since the contention of the Petitioner is that the wife refused to live with him on the allegation of adultery by the wife which was not proved in the evidence during enquiry before the learned Judicial Magistrate by the husband/Respondent before the learned Judicial Magistrate No.II, Pollachi. Therefore, she is not entitled to the maintenance is not at all to be accepted as it is for the wife to decide under what circumstances she left the matrimonial home and that had been properly appreciated by the learned Judicial Magistrate No.II, Pollachi, in the enquiry by appreciation of evidence from both parties. When the learned Judicial Magistrate had arrived at the clear conclusion that the wife is entitled to claim the maintenance, this Court, exercising the extraordinary powers under Section 482 Cr.P.C cannot set aside the order regarding the claim of maintenance by the Respondent/wife herein as the Petitioner before the Court of the learned Judicial Magistrate No.II, Pollachi.

4. If this petition is allowed by setting aside the order of grant of maintenance, it amounts to setting aside the order of the learned Judicial Magistrate No.II, Pollachi, which is based on evidence, which this Court cannot exercise by invoking extraordinary powers under Section 482 Cr.P.C against the guidelines issued to the High Court by the Hon'ble Supreme Court of India.



5. In the light of the above, this Criminal Original Petition is dismissed. The learned Judicial Magistrate is directed to pass appropriate orders if any petition is filed on behalf of the Petitioner before the Judicial Magistrate regarding the collection of arrears of maintenance and other resultant benefits within a period of three months thereafter. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

mn

To

1.The First Additional District and Sessions Judge,
Coimbatore.

2.The Judicial Magistrate No.II, Pollachi.

+1cc to Mr.K.Sudhakar, Advocate SR. No. 28214

Crl.O.P.No.84 of 2019
and

Crl.M.P.No.104 of 2019

SR(CO)
PR (26/05/2022)