

P. Ochu Vs. Mrs. Selsa,

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Court : Chennai

Decided On : Feb-14-2003

Reported in : IV(2004)BC471

Judge : V. Kanagaraj, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482

Appeal No. : Criminal Original Petition No. 1035 of 2003 and Crl. M.P. No. 327 of 2003

Appellant : P. Ochu

Respondent : Mrs. Selsa, ;minor Prakash Kumar and Minor Priyanga

Advocate for Def. : N. Anantha Padmanabhan, Adv.

Advocate for Pet/Ap. : S.P. Meenakshi Sundaram, Adv.

Judgement :

ORDER

V. Kanagaraj, J.

1. The above criminal original petition has been filed under Section 482 of the Code of Criminal Procedure praying to set aside the order dated 11.9.2001 made in M.C. No. 9 of 2001 by the Court of Additional Judicial Magistrate, Usilampatti as

confirmed by the order dated 1.10.2002 made in Criminal revision petition No. 78 of 2001 by the Court of Additional Sessions Judge (Fast Track Court No. III), Madurai.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for both, it comes to be known that the petitioner herein is the husband of the first respondent and father of the minor respondents 2 and 3; that the respondents herein filed a petition under Section 125 Cr.P.C. before the Court of Additional Judicial Magistrate, Usilampatti as against the petitioner herein for maintenance and the said Court having conducted a thorough enquiry into the matter, wherein on behalf of the respondents herein two witnesses were examined as P.Ws.1 and 2 for oral evidence and three documents were marked as Exs.A.1 to A.3 and on behalf of the petitioner herein, he examined himself as R.W.1 for oral evidence with no documentary evidence marked on his behalf, and appreciating the same the Court ordered a maintenance of a sum of Rs.500/= to each of the respondents. Aggrieved, the petitioner herein has filed a Criminal Revision Petition No. 78 of 2001 before the Court of Additional Sessions Judge(Fast Track Court No. III), Madurai and the said Court also having dismissed the said revision thereby confirming the order of the trial Court, the petitioner has come forward to file the above criminal original petition on certain grounds as brought forth in the above criminal original petition.

3. During arguments, the learned counsel for the petitioner would submit that the quantum of maintenance awarded by the Courts below is huge and excessive and would pray to allow the above criminal original petition.

4. On the contrary, the learned counsel for the respondents, besides submitting that both the Courts below having taken into consideration all the facts and circumstances of the case, have ordered the maintenance to the respondents, would also submit that the above criminal original petition filed by the petitioner as against the order in revision is not maintainable as it amounts to second revision. In support of his arguments, the learned counsel for the respondents would cite two judgments delivered by a learned single Judge of this Court, the first one in SAMIDURAI vs. RAJALAKSHMI reported in 1999 1 L.W.(CrI.) 221 and the second

one in RAJENDRAN vs. USHARANAI reported in 2001 1 L.W.(crl.)319. In the first judgment cited above, it has been held:

'As laid down in 1993 SCC (Cri) 333, it is now well-settled that the inherent powers under Section 482 of the Code cannot be utilised for exercising power which are expressly barred under Sections 397(3) and 399(3) Cr.P.C. Ordinarily, when revision has been barred under Section 397(3) of the Code, a person cannot be allowed to take recourse to the High Court under inherent powers of the High Court under Section 482 Cr.P.C., since it may amount to circumvention of the provisions of Section 397(3) Cr.P.C. When the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the Courts or the required statutory procedure has not been complied with or there is failure of justice or order passed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected or else grave miscarriage of justice would ensue.'

In the second judgment cited above, it has been held:

'... the petition under Section 482 Cr.P.C. is not maintainable against the order passed in revision by the Sessions Court as it amounts to second revision.'

Relying on the above judgments, the learned counsel for the respondents would pray to dismiss the above criminal original petition.

5. In consideration of all the facts and circumstances of the case, the relevant provisions of law for consideration in the case in hand are Sections 397(3) and 399(3) of the Cr.P.C. wherein it has been clearly mentioned that once the revision is decided by the Court of Sessions, no second revision or in any other manner a proceeding could lie before the High Court under Section 482 of the Cr.P.C. and therefore it is not proper to argue that the High Court, regardless of these Sections it could make use of its discretion to entertain such an application in the form of a criminal original petition, which would mean only circumventing the law and the same is erroneous and faulty. Therefore, it is only prudent to decide in consonance with the provisions of law envisaged under Sections 397(3) and 399(3) Cr.P.C. that the very institution of the above criminal original petition as

against the order passed by the Court of Sessions in a criminal revision petition is not maintainable and the question is decided accordingly.

In result, the above criminal original petition, for the foregoing reasons, is dismissed as not maintainable.

Consequently, Crl.M.P. No. 327 of 2003 is also dismissed.

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