

DATED: 02.08.2010

CORAM:

THE HONOURABLE MR.JUSTICE T.SUDANTHIRAM

Criminal Revision Case No.771 of 2010

and M.P.Nos.1 & 2 of 2010

K.Senthilnathan .. Petitioner

Vs.

Mrs.Jaichitra .. Respondent

Prayer : Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure against the order passed by the learned Chief Judicial Magistrate, Cuddalore dated 25.06.2010 in CMP.No.593 of 2009 in M.C.No.11 of 2007. For Petitioner : Mr.T.N.Buvaneswaran

O R D E R

The petitioner herein is the respondent in M.C.No.11 of 2007 on the file of the learned Chief Judicial Magistrate, Cuddalore. The respondent herein filed an application under Section 125 Cr.P.C. against the petitioner herein claiming maintenance. The respondent/wife also filed proof affidavit for letting in evidence. At this stage, the petitioner herein filed an application under Section 258 Cr.P.C. to stop the proceedings on the ground that the Family Court, Chennai granted divorce declaring that the petitioner's wife is a person of unsound mind and as such she is disqualified from adducing evidence before the Court. The said Judgment and decree passed by the Family Court is still in force. The learned Magistrate dismissed the said application filed by the petitioner. Aggrieved by the said order of the learned Chief Judicial Magistrate, the petitioner has preferred this revision.

2. The learned counsel for the petitioner submitted that the learned Magistrate had dismissed the petition of the petitioner based on document Ex.R1 produced by the respondent herein and the said document is nothing but a mark sheet given by Annamalai University and it is not a medical fitness certificate. The learned counsel for the petitioner further submitted that the learned Magistrate erred in holding that the respondent herein is a competent person to adduce evidence. The learned counsel further submitted that prejudice would be caused to the petitioner by compelling him to cross examine the respondent, who is of unsound mind.

3. This Court perused the records.

4. If an application is filed under Section 125 Cr.P.C., the next course open to the Magistrate is only to record all the evidence as per Section 126 Cr.P.c. There is no provision available to the petitioner herein to file an interim application to stop the proceedings. The Judgment and decree passed by the Family Court is only an exparte order and as such it is not binding on the Criminal Court to decide the issue while claiming maintenance. The learned Magistrate also on perusing Ex.R.1, mark sheet given by the Annamalai University held that the respondent has completed M.Phil Course and she did the said course during the year 2006-2008 and had obtained more than 50% of the marks. It is not possible at this stage for this Court to hold that the respondent is a person who is of unsound mind. It is open to the petitioner herein during the trial to raise such plea. This Court does not find any infirmity in the order passed by the learned Magistrate dismissing the application filed by the petitioner herein under Section 258 Cr.P.C. The Criminal revision Case is dismissed. Consequently, connected miscellaneous petitions are also dismissed. 02.08.2010

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Index:Yes

Internet:Yes

To

Chief Judicial Magistrate, Cuddalore

T.SUDANTHIRAM,J.

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CrI. R.C. No.771 of 2010

02.08.2010