

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.Revision Case No.1237 of 2008
and
M.P.No.1 of 2008

1. Santhamani

2. Minor Vidya
rep.by her guardian and
mother Smt.Santhamani ... Petitioner/Petitioners/Petitioners

Versus

Durai alias Rangasamy ... Respondent/Respondent/Respondent

Revision Petition filed under Sections 397 read with Sec. 401 of Cr.P.C. against the order dated 28.11.2007 passed by the learned Judge, Family Court, Coimbatore in C.M.P.No.473 of 2006 in M.C.No.27 of 2003.

For Petitioner : Ms.Devipriya
for Mr.V.Nicholas

For Respondent : Mr.J.Pothiraj

ORDER

This Criminal Revision Case is preferred as against the dismissal order dated 28.11.2007 passed by the learned Judge, Family Court, Coimbatore in C.M.P.No.473 of 2006 in dismissing the petition filed by the petitioners under Section 128 of the Criminal Procedure Code seeking to enforce the order of maintenance ordered in M.C.No.27 of 2003. The said application was dismissed by the Court below on the only ground that they did not indicate the nature of relief required.

2. Learned counsel appearing for the petitioners would submit that Section 128 of the Criminal Procedure Code is meant only for enforcement of the order of maintenance and Section 125(3) of the Cr.P.C specifically states that there is no necessity to indicate in the petition, the specific mode of recovery for arrears of maintenance. Accordingly, she would submit that when the respondent/husband has not paid the amount, it is for the authority to take note of the same and issue warrant for levying the amount as per the provision. However, the Court below rejected the same. Hence, the revision.

3. Learned counsel appearing for the respondent would only contend that the Court below should have given an opportunity to the

respondent/husband to prove that some of the amount paid by him to the petitioners herein have not been stated in their petition. Accordingly, he would submit that the order passed by the Court below does not warrant any interference.

4. I have heard both sides and perused the materials available on record.

5. At this juncture, it is just and necessary to extract Section 125(3) of the Criminal Procedure Code:

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

1)

2)

3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation—

If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him."

A careful perusal of the aforesaid provision would clearly indicate that the Magistrate has got ample power for every breach of the order for payment of maintenance. Accordingly, the petitioners herein have preferred the above petition before the Court below for recovery of the maintenance passed in M.C.No.27 of 2003.

6. In view of the above, it is suffice to state that the authority, viz., Magistrate shall take necessary action as per the aforesaid provision for recovery of the arrears of maintenance from the respondent/husband and to pay the same to the petitioners/wife.

7. In the result, this Criminal Revision Case is allowed and the order dated 28.11.2007 passed by the learned Judge, Family Court, Coimbatore is set aside. The matter is remitted back to the Court below for passing fresh orders in accordance with Section 125

(3) of the Criminal Procedure Code. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

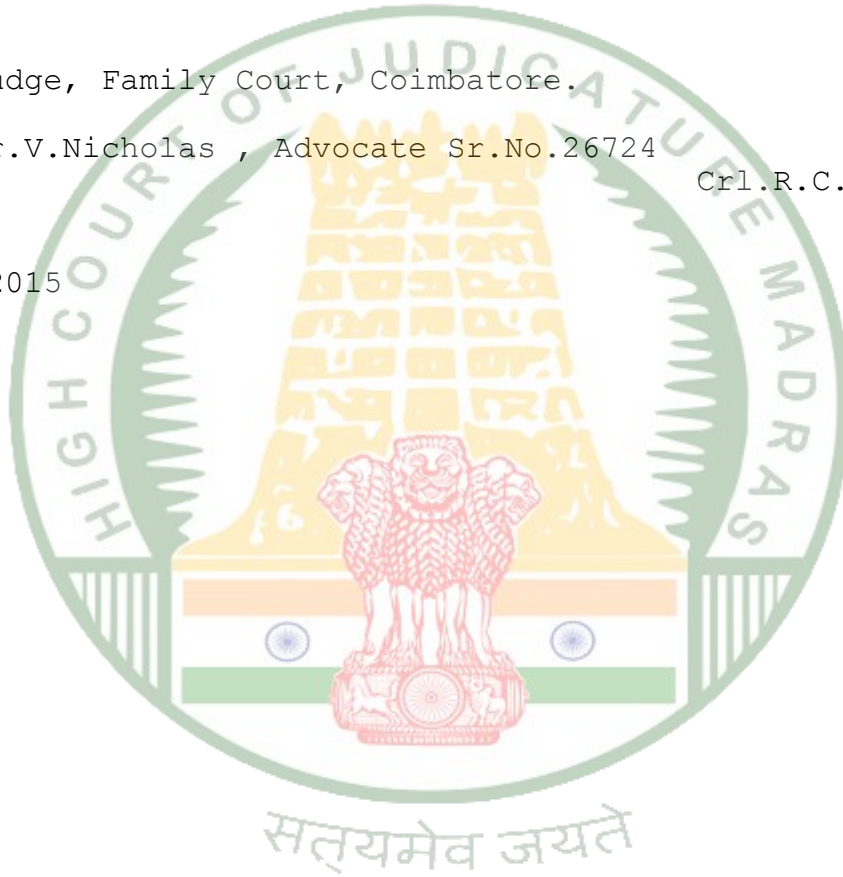
vj2
To

1. The Judge, Family Court, Coimbatore.

1 cc to Mr.V.Nicholas , Advocate Sr.No.26724

Crl.R.C. No.1237 of 2008

bvr(co)
pmk.19.6.2015



WEB COPY