

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2015

Coram

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

Criminal Revision Case No. 721 of 2009

Kuppusamy

.. Petitioner

Versus

Madeswari

.. Respondent

Criminal Revision Case filed under Section 397 and 401 of Cr.P.C. against the order dated 29.06.2009 passed in C.M.P. No. 5452 of 2008 in M.C.No.9 of 1992 on the file of the Judicial Magistrate, Tiruchengode.

For Petitioner : Mr. N.Manokaran

ORDER

The petitioner has come forward with this Criminal Revision Case aggrieved by the order passed by the trial Court directing the petitioner to pay the past maintenance to the respondent.

2. According to the revision petitioner, the respondent herein has filed M.C. No. 9 of 1992 seeking maintenance. The trial Court, by an order dated 28.09.1994, directed the petitioner to pay maintenance to the respondent at the rate of Rs.500/- per month from 04.12.1992, being the date of filing of the petition. Aggrieved by the same, the petitioner has filed Crl.R.C. No. 745 of 1994 before this Court. This Court, by an order dated 06.11.1996 modified the order passed by the trial Court in so far as quantum of maintenance amount is concerned by reducing it from Rs.500/- per month to Rs.400/- per month. According to the respondent, from 04.12.1992 till 04.08.2008, the petitioner did not pay the maintenance amount for about 188 months which works out to Rs.75,200/-.

3. It is seen from the records that even prior to the order dated 06.11.1996 passed by this Court in Crl.R.C. No. 745 of 1994 reducing the quantum of maintenance amount from Rs.500/- to Rs.400/-, the respondent has filed an application under Section 125 of Cr.P.C. calculating the arrears payable by the petitioner at the rate of Rs.500/- per month and sought for a direction to the petitioner to pay a sum of Rs.94,000/-. After the order dated 06.11.1996 was passed by this Court, the respondent has filed the instant application in C.M.P. No. 3452 of 2008 in M.C. No. 9 of 1992 before the trial Court claiming past maintenance at the rate of Rs.400/- per month for 188 months which works out to Rs.75,200/-. The trial Court, taking into consideration the earlier order passed by it and also the modified order passed by this Court, has passed the order dated 29.06.2009 directing the petitioner to pay the past maintenance amount to the

respondent. Aggrieved by the same, the petitioner has filed the present Criminal Revision Case.

4. The learned counsel appearing for the petitioner would contend that the court below did not take into account that there is a statutory bar under proviso to Section 125 (3) of Code of Civil Procedure for ordering past maintenance beyond 12 months. Therefore, the learned counsel for the petitioner would contend that the order of the court below directing the petitioner to pay past arrears for 188 months is legally not sustainable. In any event, the order passed by the trial court directing the petitioner to pay arrears of maintenance beyond the period of one year is unsustainable and he prayed for allowing this Criminal Revision Case.

5. I heard the counsel for the petitioner and perused the materials on record. Before dealing with the contentions urged on behalf of the petitioner, it is necessary to look into the provisions of Section 125 (3) of Cr.P.C. which reads as follows:-

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

(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 allowances 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.

6. It is evident that the proviso contained in Section 125 (3) of the Cr.P.C. provides for filing an application within one year from the date on which the arrears amount became due. In the present case, admittedly, even prior to the order dated 06.11.1996 passed by this Court in Crl.R.C.No.745 of 1994 reducing the quantum of maintenance amount from Rs.500/- to Rs.400/-, the respondent has filed an application under Section 125 of Cr.P.C. calculating the

arrears payable by the petitioner at the rate of Rs.500/- per month and sought for a direction to the petitioner to pay a sum of Rs.94,000/-. Only thereafter, the present application has been filed before the trial Court.

7. The trial Court, on appreciation of the facts of the case held that when the liability of the husband has been fixed in a maintenance proceedings, the wife need not file an application claiming the arrears of maintenance every year. Therefore, it was held that the bar under Section 125 (3) of Cr.P.C. cannot be made applicable to the facts of the present case.

8. In this context, useful reference can be made to the decision of the Honourable Supreme Court in the case of (Poongodi and another vs. Thangavel) reported in 2013 (6) CTC 338 (SC) wherein the Honourable Supreme Court had an occasion to consider whether time limit of one year prescribed in first proviso to Section 125 (3) of Cr.P.C. for execution of Order of Maintenance is a bar to claim arrears of maintenance beyond one year. It was held that the one year's time limit prescribed in Proviso would apply for imposition of penalty of levy of fine and detention of defaulter in custody for non-payment of arrears of maintenance and the bar contained in the First Proviso to Section 125 (3) of Cr.P.C. will not extinguish or limit entitlement of claimant for arrears of maintenance. In Para No.7, it was held as follows:-

"7. ...The application dated 05.02.2002 filed by the Appellants under Section 125 (3) was in continuation of the earlier Applications and for subsequent periods of default on the part of the Respondent. The First Proviso to Section 125 (3) therefore did not extinguish or limit the entitlement of the Appellants to the maintenance granted by the learned Trial Court, as has been held by the High Court."

9. Similarly, in the case of (Shantha @ Ushadevi and another vs. B.G. Shivananiappa) reported in (2005) 4 Supreme Court Cases 468, it was held by the Honourable Supreme Court that Section 125 of Cr.P.C. is enacted as a measure of social legislation and it has to be construed liberally for the welfare and benefit of the wife and children. It was further held that by citing the bar under Section 125 (3) of Cr.P.C. insisting the wife or children to file successive application for recovery of the arrears of maintenance is unreasonable since liability to pay maintenance is a continuing liability. In Para No.7 of this decision, the Honourable Supreme Court held as follows:-

"7. It is true that the amount of maintenance became due by virtue of the Magistrate's order passed on 20th January, 1993 and in order to seek recovery of the amount due by issuance of warrant, application shall be made within a period of one year from the date the amount became due. In the present case, the application, namely, Crl. Misc. Petition No. 47 of 1993 was filed well within one year. As no amount was paid even after the disposal of the matter by the High

Court, the appellant filed I.A.1 in Crl. Misc. Petition No. 47 of 1993 wherein the arrears due up to that date were calculated and sought recovery of that amount under Section 125 (3). Thus, I.A. 1 was filed even when Crl. Misc. Petition 47 of 1993 was pending and no action to issue warrant was taken in that proceeding. Crl. Misc. Petition of 47 of 1993 which was filed within one year from the date the amount became due was kept alive and it was pending althrough. The purpose of filing I.A. on 1st September, 1998 was only to mention the amount due upto date. The fact that the additional amount was specified in the I.A. does not mean that the application for execution of the order by issuing a warrant under Section 125(3) was a fresh application made for the first time. As already noticed, the main petition filed in the year 1993 was pending and kept alive and the filing of subsequent I.A. in 1998 was only to specify the exact amount which accrued due upto that date. Such application is only supplementary or incidental to the petition already filed in 1993 admittedly within the period of limitation. The fact that only a sum of Rs. 5,365/- representing the arrears of eight months was mentioned therein does not curtail the scope of Crl. Misc. Petition filed in 1993 more so when no action was taken thereon and it remained pending.

10. The provisions of Section 125 of Cr.P.C. is a benevolent legislation intended to provide a succor to the wife and children. As rightly pointed out by the trial Court, when once the liability of the husband to pay the maintenance has been fixed, the wife need not approach the trial Court every year to file a petition claiming past arrears. In the present case, the quantum fixed by the trial Court originally at Rs.500/- has been modified and reduced by this Court at Rs.400/- per month and it has become final. Therefore, the petitioner/husband is bound to pay the amount to the respondent. The bar provided under Section 125 (3) of Cr.P.C. has to be therefore harmoniously interpreted in favour of the wife/respondent to render a source of livelihood to her especially when her claim for maintenance has been upheld by the trial Court as well as this Court in the Criminal Revision Case filed by the petitioner himself. Furthermore, only a meager amount has to be paid by the petitioner/husband at the rate of Rs.400/- per month as per the modified order passed by this Court on 06.11.1996 in Crl.R.C. No. 745 of 1994. It is needless to mention that the obligation on the part of the petitioner to maintain the wife is not only legal but also moral. Therefore also, I do not find any reason to interfere with the order passed by the trial Court. Accordingly, the Criminal Revision Case is dismissed.

smi/rsh

Sd/-
Assistant Registrar

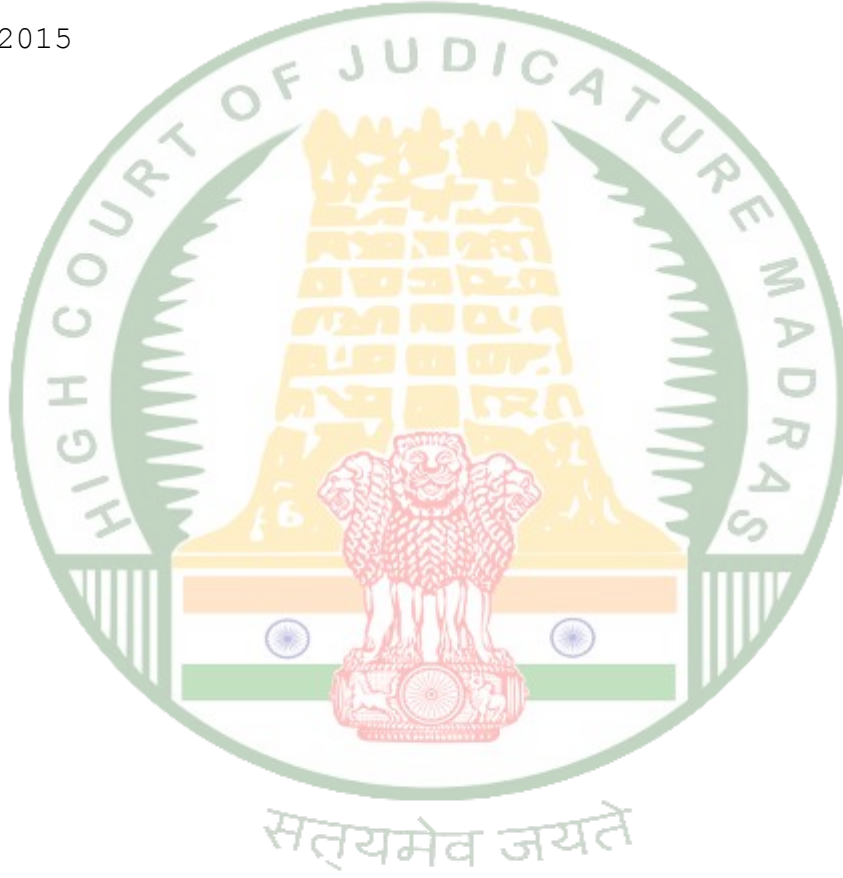
To

1. The Judicial Magistrate,
Tiruchengode.
2. The Chief Judicial Magistrate,
Namakkal

+1 C.C. To MR.N.Manokaran, Advocate in SR.NO.45754

CrI.R.C.No.721 of 2009

CA (CO)
sd : 24/11/2015



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