

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-06-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 894 of 2008
& M.P.No.1 of 2008

1.Sivalingam
2.Rajeswari
3.Subramani
4.Gunavathi
5.Raman

.. Petitioners

Versus

1.Parvathi
2.S.Senthil
3.S.Nathiya

.. Respondents

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order dated 19.05.2008 passed in C.M.P. No. 9623 of 2007 on the file of the Judicial Magistrate No.III, Erode.

For Petitioners : Mr.T.Thamizhmani

For Respondents : Ms.Uma
for Mr.C.S.Saravanan

ORDER

This Criminal Revision Case is filed by the first petitioner/husband questioning the correctness of the quantum of interim maintenance ordered by the learned Judicial Magistrate No.III, Erode, in C.M.P.No.9623 of 2007, by order dated 19.05.2008. By the said order, the Court below has directed the first petitioner to pay a sum of Rs.750/- per month to the first respondent/wife towards interim maintenance.

2. On 17.06.2015, when the matter is taken up, there is no representation for the petitioners and the matter is directed to be posted on 23.06.2015 under the caption, "for dismissal". Even today, when the matter is taken up, learned counsel appearing for the petitioners is not present and on his behalf, Ms.T.Thamizhmani, learned counsel represented the matter and sought for an adjournment, though, the case is listed today under the caption "for dismissal", this kind of practice is deprecated by the Hon'ble Apex in the judgment reported in (2013)3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, and has held that the Court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so. The Hon'ble Apex Court in the said decision has culled out certain principles and in paragraph No.19 has held as follows:-

"19. From the aforesaid decision in Bani Singh vs. State of Uttar Pradesh, reported in (1996) 4 SCC 720, the principles that can be culled out are:

19.1. That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;

19.3. That the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. That it can dispose of the appeal after perusing the record and judgment of the trial court;

19.5. That if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. That if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."

In the light of the principles culled out in the judgment of the Hon'ble Apex Court cited supra, it is crystal clear that no doubt, the Court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so and further, the Court can decide the matter even in the absence of petitioner or his counsel, but, only criteria is that the case should be decided on merits in the absence of the petitioner and the Court cannot dismiss an appeal for non-prosecution simpliciter without examining the case on merits. In the light of the decision cited supra, as the case is pending from 2008 and the petitioners are successful in dragging on the case, the main Criminal Revision Case itself is taken up and disposed of on merits, after hearing the learned counsel appearing for the respondents and also after perusing the materials available on record.

3. On a perusal of the grounds raised in the revision, it is seen that the main ground raised is that when the husband and wife relationship itself is in dispute, the interim maintenance has been granted without any basis. He would further add that the Lower Court ought to have taken into consideration the pendency of CrI.O.P.No.1729 of 2008, which has been filed seeking to quash the complaint.

4. On a perusal of the judgment passed by the Lower Court, it is seen that the Lower Court has categorically stated in its order that mere pendency of the Criminal Original Petition seeking to quash the complaint is not a bar to get on with the Maintenance Case, when, there is no stay granted in the Criminal Original Petition. Even, according to the first respondent/wife, she has asked only for interim maintenance, during the pendency of the Maintenance Case, for which, there can be no prohibition. Even the stand taken in the revision is the stand taken in the Criminal Original Petition seeking

to quash the complaint. When there is no stay, rightly the Lower Court has ordered interim maintenance. There is no discrepancy in the order on merits. The Lower Court has directed the first petitioner to pay a sum of Rs.750/- per month as interim maintenance, which is very meagre. Taking into consideration of the fact that the revision has been kept pending from 2008, apart from the fact, even though, the case is posted today for dismissal, the petitioners are not prepared to get on with the case, this is not a fittest case to interfere with the reasoned order passed by the Lower Court.

5. In the result, this Criminal Revision Case is dismissed and the order dated 19.05.2008 passed in C.M.P.No.9623 of 2007 on the file of the Judicial Magistrate No.III, Erode, stands confirmed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

paa

To

1.The Judicial Magistrate No.III,
Erode.

2.-do- Thro The Chief Judl.Magistrate, Erode.

1 cc to Mr.C.S.Saravanan , Advocate Sr.No.30603

1 cc to Mr. C.S.Saravanan, Advocate Sr.No.30766

Crl.R.C. No. 894 of 2008

tej (co)

pmk.9.7.2015

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