



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.06.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

CRL.RC (MD) No.308 of 2015

and

MP (MD) No.1 of 2015

WEB COPY

Ravi Balakrishnan

... Petitioner / Respondent

-vs-

Thamizharasi

... Respondent / Petitioner

PRAYER: Criminal Revision Petition is filed, under Section 397 r/w 401 Cr.P.C., to call for the records relating to the impugned order, dated 23.03.2015, made in M.C.No.3 of 2014, on the file of Judicial Magistrate, Musiri, set aside the same.

For Petitioner: Mr.T.V.Sivakumar for Mr.B.Muruganandam

For Respondent: Mr.T.Vadivelan

O R D E R

An husband wishes to minimise the quantum of maintenance, which he was ordered to pay to his wife.

2. The revision petitioner is the husband and the respondent is his wife.

3. On 23.03.2015, the learned Judicial Magistrate, Musiri, in M.C.No.3 of 2014, ordered the revision petitioner to pay monthly maintenance at the rate of Rs.4,000/- to the respondent, with effect from the date of filing of the maintenance case.

4. The learned counsel for the petitioner would submit that the revision petitioner is aged. He is going to be superannuated. Further, he is also bound to pay her maintenance at the rate of Rs.1,500/- per month, which has been ordered under Section 24 of the Hindu Marriage Act, in H.M.O.P.No.67 of 2008, by the learned Sub Judge, Mettur. Now, totally it comes to Rs.5,500/-. He finds it difficult to pay the said amount in view of his various other obligations.

5. The learned counsel for the petitioner invited our attention to Section 127(2) Cr.P.C., which states that the learned Magistrate while fixing maintenance under Section 125 Cr.P.C.,



hall also take into account any order passed by a Civil Court. In such an event, either the Magistrate can cancel or vary the maintenance order passed under Section 125 Cr.P.C.

6. According to the learned counsel for the petitioner, in this case, inasmuch as the Civil Court has passed an order, Section 127(2) Cr.P.C., applies to this case. Further, the revision petitioner is also not particular about continuing the revision filed by him as against the said *pendende lite* maintenance ordered by the matrimonial Court under Section 24 of the Hindu Marriage Act.

7. On the other hand, the learned counsel for the respondent would submit that the revision petitioner is a defaulter. There is huge arrears. This aspect was noted by the learned Magistrate while passing the maintenance order. Further, even now the matrimonial case is pending.

8. I have anxiously considered the rival submissions and perused the impugned order and also the materials on record.

9. We have already given necessary facts. Let us not duplicate it.

10. While Section 125 Cr.P.C., provides granting of maintenance to wives, children and parents, Section 127 (2) Cr.P.C., provides for cancelling or varying on account of certain events. One of them is Civil Court decree and orders. The Magistrate can take into account a Civil Court order granting maintenance while fixing the quantum of maintenance under Section 125 Cr.P.C.

11. Section 127 (2) Cr.P.C., speaks about altogether cancelling the maintenance order passed under Section 125 Cr.P.C. It also employs the words that 'the Court may vary'. The said word 'vary' cannot be taken as complete abrogation of a maintenance order passed under Section 125 Cr.P.C. It conveys the meaning that the Court can modify it.

12. But, at the same time, the language employed in Section 127(2) Cr.P.C., does not mean that as and when a Civil Court passes maintenance decree, necessarily and compulsorily the maintenance order passed, under Section 125(2) Cr.P.C., is required to be cancelled or varied under Section 127(2) Cr.P.C. What Section 127 Cr.P.C., says is that the Magistrate can consider and take into account the Civil Court's orders. Suppose, if such consideration does not require any change in the maintenance order passed under Section 125 Cr.P.C., the Magistrate need not change it. Suppose, the husband is asked to pay maintenance on the civil side, again he may not be taxed / vexed under Section 125 Cr.P.C.



Of course, to some extent, modification can be done. That is the idea behind in inserting sub-section (2) to Section 127 Cr.P.C.

13. Now, in this case, the learned Magistrate in his maintenance order even though the learned Magistrate made some reference about the respondent having been granted maintenance under Section 24 of Hindu Marriage Act by a Civil Court, the learned Magistrate did not go further. Mere reference about the Civil Court's order in a maintenance order under Section 125 Cr.P.C., is not sufficient.

14. Now, in this case, the revision petitioner is already burdened to pay a monthly maintenance of Rs.4,000/- to the respondent under Section 125 Cr.P.C. Again, he has to pay Rs.1,500/- per month based on the Civil Court's order. In the facts and circumstances, taking into account the Civil Court's order, the maintenance order passed in M.C.No.3 of 2014 is required to be modified to certain extent.

15. The matrimonial O.P., between the spouses has travelled from Sub Court, Mettur, to the Sub Court, Trichy. It is pending there. The spouses are getting old. So also their H.M.O.P.

16. In the circumstances, ordered as under:

- (i) Maintenance of Rs.4,000/- per month ordered in M.C.No.3 of 2014, by the learned Judicial Magistrate, Musiri, is modified to Rs.3,500/- per month with effect from today.
- (ii) The learned Sub Judge, Trichy, will dispose of H.M.O.P.No.67 of 2008, transferred from the file of the Sub Court, Mettur, within a period of four months from the date of receipt of a copy of this Order.
- (iii) In honouring his commitment to the Court, the revision petitioner will withdraw his C.R.P.(NPD) No.3831 of 2014, pending before the Principal Bench of this Court.

17. Accordingly, this revision is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

/True copy/

Sub Assistant Registrar



To:

- 1.The Subordinate Judge, Trichy.
- 2.The Principal Sub Judge, Trichy.
- 3.The Judicial Magistrate, Musiri.

+1 CC to Mr.B.MURUGANANDAM, Advocate, SR No.31046

+1 CC to Mr.T.VADIVELAN, Advocate, SR No.30970

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