



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2016

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

Crl.O.P.(MD) No.17545 of 2016

1.S.Janaki
2.Minor.Kabeer Vishnu
3.Minor Vishnupriya ... Petitioners/A1 to A3
2nd and 3rd petitioners rep by its
1st petitioners's mother/Natural
guardian

-vs-

Siva @ Sivaji ...Respondent/Respondent

Prayer: Petition filed under Section 482 of Code of Criminal Procedure to direct the Family Court, Trichy, to number the petition filed by the petitioners in Crl.M.P.S.R.No.2795 of 2016 in M.C.NO.208 of 2014 filed under Section 128 Cr.P.C and dispose the same within stipulated time.

For Petitioners : Mr.M.Subash Babu

O R D E R

This petition is filed for a direction to the Family Court, Trichy, to number the petition filed by the petitioners in Crl.M.P.S.R.No.2795 of 2016 in M.C.NO.208 of 2014.

2. Heard the learned counsel for the petitioners and perused the materials available on record.

3. Mr.M.Subash Babu,learned counsel appearing for the petitioners would submit that the first petitioner is the wife and the petitioners 2 and 3 are children of the respondent. In M.C.NO.208 of 2014, the Family Court has ordered maintenance in favour of the petitioners and to enforce the order and to recover the maintenance amount, they filed an application on 06.05.2015. However, the said application was returned on the ground of limitation.

4. The learned counsel, relying upon the judgment of this Court in **P.Vaithi Vs. Kanagavalli and Another (2010 (4) MLJ(Crl.) 398)**, would submit that there is no limitation for filing an application under Section 128 Cr.P.C. The relevant portion of the said order is extracted hereunder:



6. After an order is passed directing to pay maintenance, the party in whose favour such an order has been passed has got two options to work out to recover the arrears from the other. He can choose to approach the court under Section 125(3) Cr.P.C. requesting the court to punish the defaulter by imposing appropriate imprisonment. On the other hand, he can also approach the court under Section 128 of Cr.P.C. seeking to recover the amount due under the maintenance order. A comparison of Sections 125(3) and 128 of Cr.P.C. would keep things beyond any pale of doubt that in so far as the proceeding under Section 125(3) is concerned, the statute has prescribed a period of limitation of one year, whereas in respect of a proceeding under Section 128 of Cr.P.C., there is no limitation provided at all. This is because, while exercising the power under Section 125(3) Cr.P.C. the action being essentially a criminal in nature, resulting in punishment of imprisonment, the legislature has perhaps, thought it fit to provide such a period of limitation of one year to file a petition. Since, while enforcing an order under Section 128 of Cr.P.C. for recovery of the amount, there is no question of straight away imposing such a punishment of imprisonment and that may be the reason for the legislature not to provide for such a period of limitation. Therefore, to put it in nutshell, for initiating a proceeding for enforcing an order by invoking Section 128 of Cr.P.C., absolutely, I find no provision providing for limitation as it is provided in respect of proceedings under Section 125 (3) of Cr.P.C. In the case on hand, the petition was filed under Section 128 of Cr.P.C. Though it was filed beyond one year, in my considered opinion, the lower court was right in entertaining the same as the same is not barred by any limitation.

5. In the light of the decision of this Court cited supra, the Family Court, Trichy, is directed to number the petition in CrI.M.P.S.R.No.2795 of 2016 in M.C.NO.208 of 2014 and decide the same on merits and in accordance with law.

6. Accordingly, this petition is disposed of.

Sd/-

Assistant Registrar (Writ)

/True Copy/

Sub Assistant Registrar



To:

1. The Family Court,
Trichy.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr. M.SUBASH BABU ,Advocate, Sr.No: 54330

JAM/PV/03/10/2016/3P-4C

Cr1.O.P.(MD) No.17545 of 2016

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