



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.06.2016**

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

WEB COPY

**C.R.L.RC(MD) No.143 of 2016
and
CRL M.P. (MD) Nos.2156 & 2157 of 2016**

G.Kalyanamoorthy @ Jegadheesh ... Revision Petitioner /
Respondent

-vs-

1.D.Esther Selia
2.Iyswarya (Minor) ... Respondents / Petitioners.
R2 minor rep.by her
Guardian 1st respondent)

PRAYER: Criminal Revision Petition is filed, under Section 397 r/w 401 Cr.P.C., to admit the revision, to allow the Criminal Revision Petition and call for the records and set aside the order passed in Crl.M.P.No.357 of 2015 in M.C.No.24 of 2014 on the file of the Chief Judicial Magistrate, Kanyakumari at Nagercoil, dated 04.12.2015 insofar as the 1st respondent is concerned.

For Petitioner : Mr.R.Mohana Sundaram
For Mr. A.Rajkumar Sen

For Respondents : Mr.Murugan

O R D E R

An husband challenges interim maintenance granted to his wife and daughter.

2. On 14.09.2009, the revision petitioner married the first respondent. Then they have no problem. Then life was beautiful for them. But, then they did not know that one day they have to fight in the District Court, Nagercoil. In the fight between their parents, the second respondent is not talking any side.

3. In M.C.No.29 of 2014, before the learned Chief Judicial Magistrate, Kanyakumari at Nagercoil, the revision petitioner, wife and daughter have sought interim maintenance at the rate of Rs.5000/- per month and Rs.2500/- per month respectively. In the meanwhile, the maintenance case has become part heard. Evidence was let in. The trial Court having noted all theses aspects, granted Rs.2,500/- per month to the first respondent and Rs.1,500/- per month to the second respondent.

4. Aggrieved, the revision petitioner has directed this revision.

5. According to the learned counsel for the revision petitioner, the revision petitioner is very much interested in living with his wife. He issued a Lawyer's notice, calling upon her to live with him. He also filed I.D.O.P.No.79 of 2016 in the District Court, Nagercoil, seeking restitution of conjugal rights. In such circumstances, the impugned order is unsustainable in law.

6. On the other hand, the learned counsel for the respondents would submit that the revision petitioner calling the first respondent to come and live with him, is an eye-wash. His filing of I.D.O.P.No.79 of 2016, is only subsequent to the impugned order, as a counter blast. The trial Court has granted only a meager amount. The revision petitioner was employed as Engineer in Singapore. He is holding a Diploma in Engineering. He has means to pay the said small amount, but, he has no heart to pay it.

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

8. Section 125(1) Cr.P.C., deals with grant of maintenance to wife and children. In order to provide them immediate monetary relief to protect them from vagrancy this section has been included in Cr.P.C.,

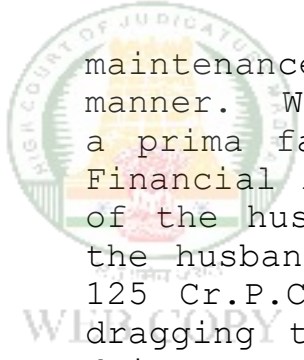
9. Now, in the present case, there is no dispute that he is holding an engineering diploma. He is bound to maintain them. But the trial of the Maintenance Case is going on for a long time. In such circumstances, like *pendente lite* maintenance by way of interim measure, interim maintenance has been ordered. Now, what was granted is also very very less i.e., Rs.2500/- + Rs.1500/- = Rs.4000.

10. Our experience tells that, when the wife filed maintenance case under Section 125 Cr.P.C., there used to be immediately filing of O.P., by the husband for restitution of conjugal rights intending to defeat the maintenance case. These are all eye-wash or for the sake of defence in a maintenance case. Even then that is a matter to be adjusted at the final disposal of the maintenance case.

11. Mere filing of O.P., for restitution of conjugal rights will not have the effect of dismissal of the maintenance case. Otherwise, it will be indirectly defeating the maintenance order. Therefore, the filing of IDOP by the revision petitioner for restitution of conjugal rights cannot erase the interim maintenance ordered by the trial Court.

12. In the facts and circumstances, the impugned order does not suffer any legality or propriety. Thus, it does not call for any interference from us.

13. Before giving good-bye to this order, we are at pains to remark that this maintenance case has been filed in the year of 2014 in the Court of Chief Judicial Magistrate, Nagercoil. Now, 2016 is towards its completion. But still this maintenance case is pending in the said Court. It is not a murder case. It is not a complicated civil suit or a tough civil appeal. It is an ordinary



maintenance petition. It requires to be disposed of in a summary manner. What is required to be considered in a case like this is a prima facie view as to the relationship between the parties. Financial inability of the wife and children and financial ability of the husband justification for the wife living separately from the husband. The work in a maintenance case filed under Section 125 Cr.P.C., is very very less. I do not understand the Courts dragging these petty maintenance cases for years together. By doing so, the very object of inserting Section 125 Cr.P.C in the Code of Criminal Procedure itself is lost. Time and again, in its several judgments, this Court insisted upon quick disposal of the maintenance cases. But, the message has not taken in its right earnest by the Magistrate Courts and the Family Courts.

14. Ultimately, ordered as under:-

(i) This revision is dismissed.

(ii) The learned Chief Judicial Magistrate, Kanyakumari District at Nagercoil, is directed to dispose of the Maintenance Case in M.C.No.29 of 2014, within a period of two months from the date of receipt of a copy of this order.

(iii) The learned Principal Sessions Judge, Kanyakumari District at Nagercoil shall instruct the learned Magistrates to dispose of the maintenance cases under Section 125 Cr.P.C., within quickest possible time.

Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(Records)

/TRUE COPY/

Sub Assistant Registrar

To

1. The learned Principal Sessions Judge,
Kanyakumari District at Nagercoil,

2. The Chief Judicial Magistrate,
Kanyakumari District, Nagercoil.

+1cc to M/S.A.RAJKUMAR SEN ADVOCATE IN SR.NO.31535

+1cc to M/S.R.MURUGAN, ADVOCATE IN SR NO: 31519

mpk

JA-ARK-PV-27.06.2016/3p:5C

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