

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-04-2017

CORAM:

THE HONOURABLE DR. JUSTICE P.DEVADASS

C.R.P.(PD) No.1366 of 2017

Deepa .. Petitioner/Petitioner/Respondent

Vs.

Balaji .. Respondent/Respondent/Petitioner

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order passed by the learned Sub-Judge, Gudiyatham on 21.9.2016 in I.A.No.20 of 2014 in HMOP No.76 of 2013.

For Petitioner : Mr.D.Rajagopal

O R D E R

Since only a narrow legal point is involved, we shall dispose of this revision today at the admission stage itself.

2. The revision petitioner is the wife of the respondent. They have married on 3.9.1998 according to Hindu rites and customs in Gudiyatham, Vellore District. They were blessed with three children. They are Vignesh, Dharshini and Harini. They were born on 6.2.2004, on 19.11.2006 and on 11.1.2009 respectively.

3. Marital discordance arose between the spouses. Consequently, they started living separately. The children are stated to be with their mother. In the circumstances, the husband filed HMOP No.76 of 2013 in the Sub-Court, Gudiyatham, seeking dissolution of his marriage with her on the ground of willful desertion and cruelty. She filed counter refuting his allegations. She also alleged that he ill-treated her with cruelty and also forced her to consent for his second marriage with another woman.

4. She is a homemaker. She has no independent income of her own. She has no financial sources for the survival of herself and her children. In the circumstances, in the HMOP, she filed I.A.No.20 of 2014 under Sections 24 and 26 of the Hindu

Marriage Act, 1955 seeking maintenance for herself and also for her children.

5. This was opposed to tooth and nail by her husband also on the ground that she is already in receipt of Rs.1,500/- p.m. and Rs.1,000/- p.m. by each child in MC No.9 of 2014 on the file of the learned Judicial Magistrate, Gudiyatham.

6. After hearing both sides, ultimately, the learned Subordinate Judge dismissed their maintenance petition on the ground that as already they are in receipt of maintenance under an order passed by the learned Judicial Magistrate, Gudiyatham under Section 125 Cr.P.C and if they want more they should have filed a petition for enhancement of maintenance before the learned Magistrate.

7. Aggrieved, this revision has been filed by the wife.

8. An husband's obligation to maintain his wife arises on marriage. Such obligation towards his children arises on their birth. These obligations are imposed on him by operation of law. It is also a moral obligation imposed upon him. It is 'immoral' and 'illegal' to deny them maintenance. In my view, it is a sacred duty of an husband or father, as the case may be, towards his wife and children. This is the least the father of a girl expects from his son-in-law. Otherwise why should he marry a woman and leave her and her children in lurch in the street.

9. Besides the love and affection of their father, the children can also seek financial support from their putative father for their genuine and reasonable needs. It is too cruel on his part to deny them maintenance. There may be many disputes or differences between their parents but that cannot be a reason to refuse them maintenance and make them to suffer. In matrimonial disputes the innocent children are the worst sufferers.

10. In the Old Code of Criminal Procedure, 1898, in Section 488, a provision for maintenance had been made for the wives, children, ageold parents to prevent vagrancy among them. When an husband, who had sufficient means/financial capacity had failed and neglected to maintain his wife and children, who are unable to maintain themselves, the said Section 488 can be invoked. The maintenance petition has to be disposed of in a summary manner by the learned Magistrates.

11. In the New Code of Criminal Procedure, 1973, in Chapter IX, Sections 125 to 128 deals with providing of maintenance to wives, children and parents. The object of

inserting such a provision in a Criminal statute is to give them immediate relief. And the Magistrates are expected to enquire and dispose of these petitions in a summary manner at the quickest possible time.

12. As per clause (b) of Explanation to Section 125(1), Cr.P.C., even a 'divorced woman', whether she has been divorced or has obtained divorce can also seek maintenance. Through an amendment made in 2001 provision has been made to provide them interim maintenance and also for litigation expenses.

13. In Metropolitan Cities and in Major Towns Family Courts have been constituted under the Family Courts Act, 1984. Still there is no change in the substantive personal law of the spouses and the children. As per Sections 7, 10 of the said Act, the Family Courts can deal with the maintenance petitions under Section 125 Cr.P.C., also. And such maintenance orders could be enforced in the same manner the maintenance orders are being enforced in the Magistrates Court under Section 128 Cr.P.C.

14. Persons professing different religions are governed under the personal law applicable to them. Marital discordance and matters connected thereto are dealt with under these personal laws. When matrimonial strife arises, the spouses approaches Matrimonial Courts, seek matrimonial reliefs such as 'restitution of conjugal rights', 'judicial separation', 'dissolution of marriage/divorce', 'declaration of nullity of the marriage' or even 'a suit to declare the legal status or marital status of a man, woman, a child'. These matrimonial proceedings may be at the instance of either spouse.

15. The said proceedings are governed under the personal laws to which the parties are subjected to, such as Hindu Marriage Act, 1955, Indian Divorce Act, 1869, Parsi Marriage and Divorce Act, 1936, Dissolution of Muslim Marriages Act, 1939, in view of Muslim Personal Law (Shariat) Application Act, 1937 'Sharia' of Islamic law, Foreign Marriage Act, 1969 and for those who have no faith in any religion or rationalists the Special Marriages Act, 1954.

16. In the matrimonial proceedings instituted under the said personal laws, the wife and children can seek maintenance against the husband/father, as the case may be. It is to provide them financial support. It is for their survival, as long as the matrimonial proceedings are pending. Thus, they came to be called 'pendent lite maintenance'. It is also a 'temporary alimony' to the wife. They are in the nature of granting 'interim relief, 'interim measure', 'interim protection'.

17. The component of such maintenance includes a 'reasonable and a fair' amount for the woman to maintain herself

'according to the mode of life to which she is accustomed to', 'according to the status to which she is entitled to', 'according to the mode or life style to which her husband is accustomed to'. But, in any case, it cannot be for a luxurious mode of living or for 'extravagansa' and not beyond the means of the husband. In case of children, this component also includes their educational expenses. They can be granted litigation expenses and monetary relief to cover their to and fro expenses to attend the Court and return their homes.

18. Hindu wives can seek such pendent lite maintenance in a pending matrimonial proceedings under Section 24 of the Hindu Marriages Act. The children can seek such maintenance from their father under Section 26 of the Act. Section 37 of the Indian Divorce Act, 1869, Section 39 of the Parsi Marriage and Divorce Act, 1936, Sections 36 and 38 of the Special Marriage Act, 1954 also deals with grant of pendent lite maintenance. Though the position in Islamic Law is different, Islamic Law do have provision for the women and children.

19. In the Metropolitan Cities and in major Towns, the Family Courts deal with the pendent lite maintenance petitions. In places where no Family Court is constituted, the District Courts and the Sub Courts deal with such petitions filed under the personal laws to which the parties belongs. They are all Civil Courts. They deal with maintenance matters on the civil side. Apart from this, certain eligible persons can also seek maintenance under the Hindu Adoption and Maintenance Act, 1956 from the Civil Courts. The principles governing grant of maintenance under this Act is different from grant of pendent lite maintenance in matrimonial cases. But contents-wise there is no much difference.

20. The object of Section 24 of the Hindu Marriages Act in providing maintenance to a party in matrimonial proceedings is obviously to provide financial assistance to the spouse to maintain herself or himself during the pendency of the proceedings and also to have sufficient funds to carry on the litigation so that the spouse does not unduly suffer in the conduct of the case for want of funds.

21. Section 24 of the Hindu Marriage Act seeks to provide financial support, wherewithal to the wife and Section 26 of the Act seeks to provide maintenance to the children to withstand the financial crisis arising out of the separation and also to face the matrimonial proceedings initiated by her husband.

22. However, that is not the object of Section 125

Cr.P.C. Section 125 Cr.P.C. and Section 24 of the Hindu Marriage Act operates in different sphere and they are independent of each other. (See Prem Nath Sarvan vs. Smt. Prem Lata Sarvan (AIR 1988 Del 50).

23. Under Section 125 Cr.P.C., even a divorcee can claim maintenance from her ex-husband. But, under Section 24 of the Act, a divorcee cannot claim maintenance. However, after divorce, she can claim 'permanent alimony' from her former husband.

24. An order passed under Section 125 Cr.P.C. will not take away the jurisdiction of the Matrimonial Courts/Civil Courts to grant pendent lite maintenance to the wife and children under Sections 24, 26 of the Hindu Marriage Act. An order of maintenance passed under Section 125 Cr.P.C shall not bar the wife and the children to recourse to Sections 24, 26 of the said Act and seek maintenance in a pending matrimonial proceedings. They can seek such a relief in a matrimonial proceedings initiated either by the husband or by the wife herself.

25. The object behind Sections 24, 26 of the Hindu Marriage Act is survival of the wife and children as long as the matrimonial proceedings are pending. It also enures to the appeals, revisions and connected proceedings arising out of the matrimonial proceedings, either from the pendente lite maintenance proceedings or from the main matrimonial proceedings.

26. No law of limitation applies to these maintenance matters. A wife, who was financially sound, at the start of the matrimonial proceedings nor disliked to get any financial support from her husband, by quirk of events, subsequently may suffer financial crisis, may need financial support and in such an event, subsequently also she can seek pendente lite maintenance in the pending matrimonial proceedings from her husband.

27. The maintenance orders passed under Section 125 Cr.P.C. are enforced under Section 128 Cr.P.C. However, the maintenance orders passed by the Matrimonial Courts/Civil Courts under Sections 24, 26 of the Hindu Marriage Act are enforced/executed as Civil Court decrees under Section 51 and Order XXI of the Civil procedure Code, 1908.

28. As per Section 127 Cr.P.C., enhancement of maintenance already granted by the Magistrate can be sought for before the Magistrate or before the Family Court, when the order

has been passed by the Family Court. However, notwithstanding such a maintenance order passed under Section 125 Cr.P.C, a wife under Section 24 of the Hindu Marriage Act and her children under Section 26 of the Act can seek pendent lite maintenance in a pending matrimonial proceedings from the husband and the father, as the case may be.

29. But the said maintenance order passed under Sections 24, 26 of the said Act, will come to an end when the matrimonial proceedings comes to an end. However, it will not be so if the maintenance order were been passed under Section 125 Cr.P.C. It will long last as long as the persons for whom the maintenance order has been passed is alive or until it is cancelled under Section 127 Cr.P.C or in a manner known to law. Law of limitation does not apply to these maintenance matters. Because it gives a 'continuous cause of action'. Non maintaining of his wife and children by an husband is a 'continuous wrong'.

30. However, while fixing the quantum of maintenance under Sections 24, 26 of the Hindu Marriage Act, the Civil Court can take into account the amount being paid to them in pursuance of an order passed under Section 125 Cr.P.C. In case, the woman is granted 'permanent alimony' it will have its repercussion in the maintenance order already passed under Section 125 Cr.P.C (See Section 127(2) Cr.P.C.).

31. But because of the existence of a maintenance order passed by the learned Judicial Magistrate, Gudiyatham under Section 125 Cr.P.C., the Matrimonial Court/Sub Court, Gudiyatham cannot refuse to entertain the maintenance petition under Sections 24, 26 of the Hindu Marriage Act filed by the revision petitioner for pendente lite maintenance. The learned Sub-Judge also cannot compel the woman and children to go to the said Magistrate and seek enhancement of their maintenance under Section 127 Cr.P.C.

32. Thus, instead of performing his obligation under Hindu Marriage Act, the learned Sub-Judge, Gudiyatham taken into account an irrelevant aspect and dismissed the maintenance petition. Such a dismissal is unsustainable in law.

33. One disturbing feature which requires our attention is delay in the disposal of the maintenance petitions under Sections 24 and 26 of the Hindu Marriage Act.

34. In this case, the wife and children of the respondent have filed this maintenance petition in I.A.No.20 of 2014 under Sections 24, 26 of the Hindu Marriage Act as early as on 19.3.2014. The husband filed his counter only on 19.8.2015.

The learned Subordinate Judge, Gudiyatham disposed of the I.A.No.20 of 2014 only on 21.9.2016. Thus, it took more than 2-½ years/30 months for the learned Sub-Judge to dispose of this simple maintenance petition. Of course, the learned Sub-Judge dismissed the petition on a misunderstanding of the law.

35. This is a classic example of 'Law's delay', 'Court's delay', 'Judge's delay', 'System law', 'System failure'. All the stakeholders in the administration of gender justice shall owe responsibility for this sorry state of affair.

36. In a matrimonial proceedings, the women and children are fighting the husband, father, as the case may be not on equal footing. Some gets financial support from their parents, brothers and sisters and also some work and earn. These are all exceptional cases. Many women and children are unable to face the onslaught of matrimonial proceedings because of their financial crisis. The husbands exploit their this pitiable plight. This is an area where 'women empowerment' is completely lacking.

37. In view of the mad rush in matrimonial Courts, it is very easy to go into these Courts, but very difficult to come out of these Courts within a short span of time. It is time consuming. The women and children financially suffer very much. During the pendency of the matrimonial proceedings without proper financial support their survival becomes very difficult. They also suffer mental agony, undergoes mental trauma. They suffer mentally, physically and also fiscally (financially).

38. The women and children are in a disadvantageous position, whereas it is not so in the case of husbands. Capitalising their this financial constraints, the husbands torture them by dragging on even these simple maintenance petitions for years together. Adding fuel to their worries, the Courts also contribute their part by their long delay in disposing of these simple maintenance petitions. Actually by their inaction the Courts abets the perpetration of matrimonial violence and exploitation of women and children by the husbands. The present case before us itself is a classic example for this allegation.

39. Presently this woeful situation prevails in almost all the Family Courts and in other Courts dealing with matrimonial proceedings. The situation is not far better in the Magistrate's Courts dealing with maintenance petitions under Section 125 Cr.P.C. If statistics of the pendency of these maintenance petitions are called for from these Courts and studied, we have to hung our heads, we will be ashamed to see

the face of the affected women and children.

40. The women and children are standing in queues in these Courts to get relief even in these simple maintenance petitions for years together. It is quite a sickening sight. They did not get their due share of justice in the administration of gender justice by these Courts. Practically, the women and children are neglected by these Courts. Only lip service is being rendered to them.

41. Actually, these pendent lite maintenance petitions have to be disposed of in a summary manner. In these petitions, the work involved is very very minimal. In these petitions, a prima facie view as to the existence of relationship between the parties, financial capacity of the husband and the financial need of the wife and the children are required to be considered. Mostly income documents will be referred to. This can be done by reading the affidavits of the spouses.

42. On the first hearing or in the next hearing or at least in the further hearing these simple maintenance petitions can be easily disposed of, fixing a reasonable quantum of maintenance. It is not a difficult and herculean task. The learned Judges need not write lengthy orders running to several pages. It is just a miscellaneous and interim measure petition. A short and swift order will do.

43. Keeping this in mind, the Law Makers have fixed a prescribed period within which these maintenance petitions have to be disposed of (See Sections 24, 26 of Hindu Marriage Act, 1955, Section 36 of Special Marriage Act, 1954, Section 37 of Indian Divorce Act, 1869, Section 39 of Parsi Marriage and Divorce Act, 1936, also see 3rd proviso to Section 125 Cr.P.C and Central Act No.50 of 2001). Generally, it is within 60 days from the date of service of notice on the wife. Subsequently, in some Statutes, this period also has been reduced.

44. Yet, what is happening in the Family Courts, in the other matrimonial Courts and in the Magistrate's Courts is very alarming. The learned Judges try these simple maintenance petitions like a murder case in a Sessions Court or a most complicated suit before a Civil Court. Consequently, this also contributes to the Law's delay.

45. After a crueiling exercise, the wife and children gets maintenance orders, generally, a paultry sum, unrealistic and unmatching to the high inflation and spiralling prices of even essential commodities. Sometimes, the Courts dismiss them on a misunderstanding of law.

46. The situation is not happy in the revisions and appeals filed before the Sessions Courts and also before this Court. The women and children will have to wait for several years and till the maintenance order is passed they suffer in silence. This is not the aim of law. This is not a correct justice delivery system.

47. Unlike in other litigations delay in the disposal of maintenance petitions affects the women and children very much. It affects a cross section of the society. It is human (woman) suffering. There are cases in which woman and children could not get financial support to survive themselves and face the matrimonial proceedings initiated by the husbands. Ultimately, they give up the legal battle, leave the Court with wounded feelings. And ex parte orders are freely passed. The erring husbands happily leave the Court. There is a victor and a vanquished. The result is failure of justice in gender justice. These are stark realities staring at our face.

48. There is no point in crying over the spilt milk. Past is past. Let us think of the future. Some remedial measures have to be attempted. Judges dealing with these simple matters must realise their responsibilities and their social obligation towards these type of litigants. They must keep in mind their pitiable plight.

49. Even in these petitions mediation, reconciliation can be attempted. Courts can effect compromise even on the quantum of maintenance in these maintenance petitions and pass orders accordingly [See Order 32-A, Section 89 CPC, Section 23 (2) Hindu Marriage Act, Section 9 Family Courts Act, 1984 and Afcons Infrastructure Ltd and Another vs. Cherian Varkey Construction Co. (P) Ltd [(2010) 8 SCC 24].

50. Our aim should be to secure succor to the affected women and children quickly. In these matters delayed justice is denial of or burial of justice. Here hurried justice is the need of the hour. Our learned Judges are to be sensitized. They must made aware of this darker side of gender justice. The same situation prevails in the Criminal Courts, in the Court of Judicial Magistrates, Metropolitan Magistrates, Mahila Courts, Family Courts, Sub-Courts and District Courts.

51. The High Court cannot be a mute, silent spectator to this stark realities in life. This Court can give suitable guidance and instructions to the learned Magistrates [see Section 483 Cr.P.C]. The Criminal Revisions arising from these maintenance matters are also required to be disposed of

expeditiously.

52. In these matters, the Tamil Nadu State Legal Services Authorities, District Legal Services Authorities, Taluk Legal Services Authorities, High Court Legal Services Committee can play a significant role.

53. In view of the foregoing deliberations and discussions, it is ordered as under:

- (1) This revision succeeds;
- (2) The order and decretal order passed by the learned Subordinate Judge, Gudiyatham, Vellore District in I.A.No.20 of 2014 in H.M.O.P. No.76 of 2013 are set aside.
- (3) The said I.A. is remanded back to the said Court for fresh disposal according to law;
- (4) The said I.A. shall be disposed of within 15 days from the date of receipt of a copy of this order.
- (5) On disposal of the said I.A the Trial Court shall submit its completion report to the Registrar (Judicial) of this Court;
- (6) On or before 7th of every month the Family Courts, the Chief Metropolitan Magistrate, Judicial Magistrates, Subordinate Judges, Fast-Track Mahila Courts, Sessions Courts, District Courts through their respective Principal District Judges, Chief Judicial Magistrates, as the case may be, shall submit a monthly statement showing the date of filing of the maintenance petitions filed under various enactments, under uncodified part of Hindu law or Islamic Law under Section 125 Criminal Procedure Code, 1973, Domestic Violence Act including the petitions filed for interim maintenance and the stage of the petitions, the reasons for pendency to the Registrar (Judicial), High Court.
- (7) The Principal District Judges, Chief Judicial Magistrates, as the case may be, shall review the disposal of these maintenance petitions every month and issue necessary directions for the early disposal of all type of maintenance petitions and submit their review report with their remarks to the Registrar (Judicial), High Court on or before 15th of every month;
- (8) The Registrar (Judicial) of this Court shall regularly monitor the progress in these maintenance petitions and also issue appropriate instructions and directions for the expeditious and early disposal of these maintenance matters;
- (9) In their said monthly statements the said Courts shall also furnish details of stay granted by the Sessions Court or this Court in the proceedings arising out of maintenance matters or in any parallel or other connected proceedings;
- (10) The Registrar (Judicial) will consolidate the details regularly and take appropriate action for their early

disposal by obtaining necessary orders;

(11) The Registrar (Judicial) will prepare a format containing columns for filling up the required details in monthly statements to be submitted to this Court by the Subordinate Courts;

(12) On entering appearance for the respondent, in Civil Miscellaneous Appeal, Civil Revisions, Criminal Revisions arising out of the maintenance matters they shall be referred to mediation and referring them to Lok Adalat or Mega Lok Adalat shall also be encouraged;

(13) The Registrar (Judicial) will regularly identify the Civil Appeals, Civil Revisions, Criminal Revisions arising out of the maintenance matters pending in this Court and take necessary action for their early disposal by getting necessary orders;

(14) In the facts and circumstances of the case, no order as to costs.

51. Accordingly, this revision is disposed of.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal District Judge,
Vellore.
- 2.The Chief Judicial Magistrate,
Vellore.
- 3.The Subordinate Judge,
Gudiyatham, Vellore District.
- 4.The Judicial Magistrate,
Gudiyatham, Vellore District.

Copy to

- 1.The Registrar-General
- 2.The Registrar (Judicial)
- 3.The Assistant Registrar (A.S.),
High Court, Madras.

4.The Assistant Registrar,
The Mediation Centre attached to
High Court, Madras.

Copy to:

1. The Member Secretary,
Tamil Nadu State Legal Services Authority,
High Court, Chennai.
2. The Secretary,
High Court Legal Services Committee,
High Court, Chennai.
3. The Member Secretary,
The Puducherry Union Legal Services Authority,
Puducherry.
4. The Director,
Tamilnadu State Judicial Academy,
Greenways Road,
R.A.Puram,
Chennai - 28.
5. The Section Officer,
'F' Section, High Court,
Madras.

+1cc to Mr.Rajagopal, Advocate, S.R.No.22600

C.R.P.(PD) No.1366 of 2017

KK(CO)
RS(09/06/2017)

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