

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

RESERVED ON :12.09.2017

PRONOUNCED ON :14.12.2017

CRL.RC. No.1070 of 2013

and

M.P.No.1 of 2013

and

Cr1.M.P.No.8504 of 2017

Viswanathan ... Petitioner/Respondent

...Vs...

1.Jalajadevi

2.Minor Vijusha

Rep by Guardian

Mother Jalajadevi

... Respondents/Petitioner

Prayer:- Criminal Revision Petition filed under Section 397 and 401 Cr.P.C., against the fair and final order in C.M.P.No.535 of 2011 in M.C.No.69 of 2007 on the file of Family Judge Court, Coimbatore dated 18.07.2013.

For Petitioner :Mr.S.Jeevitha Ramani

For Mr.A.Sivaji

For Respondent :No appearance

ORDER

This Criminal Revision Petition has been filed under Section 397 and 401 Cr.P.C., against the fair and final order in C.M.P.No.535 of 2011 in M.C.No.69 of 2007 on the file of Family Judge Court, Coimbatore dated 18.07.2013.

2. The husband is the revision petitioner.

3. As against the order passed in C.M.P.No.535 of 2011 in M.C.No.69 of 2017 dated 18.07.2013 by Family Court, Coimbatore, the husband has preferred this Criminal Revision.

4. By an impugned order dated 18.07.2013, the Family Court, Coimbatore has ordered attachment of salary of the husband to the tune of Rs.1,38,750/- as arrears and to pay the amount on or before the cut of the date failing which, ordered for attachment of the salary.

5. The brief facts that are necessary for determination, this revision are as follows:-

The respondent is the wife and the petitioner is the husband. The marriage between the petitioner and respondent was held on 25.03.1991 and the second respondent minor vijusha was born out of the legally wedlock and due to the dispute there arose some misunderstanding between the parties, the wife has filed H.M.O.P.No.23 of 2005 on the file of the Family Court, Coimbatore for dissolution of marriage under Section 13(1) (a) of Hindu Marriage Act and after contest, the marriage was dissolved by a decree and judgment dated 31.01.2007 wherein Rs.5,000/- was ordered towards maintenance of the child from the date of the order.

6. After the disposal of the said H.M.O.P wherein maintenance award was passed, it seems that the mother has filed in M.C.No.69 of 2007 before the Family Court, Coimbatore for maintenance under Section 125 of Cr.P.C for herself and for the minor daughter which appears to have been disposed on 29.07.2011 granting monthly maintenance of Rs.5,000/- to the wife and Rs.2,500/- to the minor child.

7. Subsequently, she has filed the C.M.P.No.535 of 2011 under Section 128 of Cr.P.C for arrears of maintenance as awarded by the Family Court under Section 125 of Cr.P.C to the tune of Rs.2,66,250/-. After contest, the impugned order has been passed by the Family Court, Coimbatore after adjusting the amount, the husband was directed to pay Rs.1,38,750/- on or before a cut of date, failing which, ordered for attachment of salary and the said order dated 18.07.2013 is under challenge.

8. The learned counsel for the revision petitioner-husband has contended that once an order of maintenance has been passed in H.M.O.P.No.23 of 2005 and the subsequent order of maintenance under Section 125 of Cr.P.C cannot be in addition to the amount already been awarded in the H.M.O.P., when a higher amount has been awarded in the one forum under one Act and while under different provisions of a another Act a lesser amount was granted in the different provisions in the different Act has to be adjusted and the Family Court, Coimbatore as without properly appreciated the provisions for the award of the maintenance in two different Act as wrongly calculated the amount and award the order for attachment and hence, seeks to set aside the said order.

9. Though, the respondent was served, none represented.

10. After perusing the records, the points for determination is that:-

i) Whether the petition filed under Section 128 of Cr.P.C for the enforcement of the award under M.C.No.69 of 2007 is in addition to the maintenance award already passed in H.M.O.P.No.23 of 2005 or the amount awarded in the subsequent M.C.No.125 of Cr.P.C has to be adjusted with the H.M.O.P. maintenance awarded amount?

11. At the risk of repetition, however for the sake of clarity the order of maintenance in H.M.O.P.No.23 of 2005 was dated 05.01.2005 and order of maintenance award under Section 125 of Cr.P.C in M.C.No.69 of 2007 is dated 29.07.2011, the claim of the wife before the Family Court is that she is entitled to both the maintenance award granted under the two different provisions under the two different Acts.

12. It is no doubt true that various Acts were enacted to enable the wife to seek maintenance from the husband, however the same is not without checks and balances on the husband income.

13. While, the Family Court is empowered to grant maintenance or permanent alimony while deciding matrimonial disputes, while under Section 125 of Cr.P.C they can also move the Magistrate Court or Family Court as the case may be, for maintenance of award amount. Besides, maintenance of a wife or a minor child can also be sought for under the Domestic Violence Act.

14. The above narrated Acts and provisions of the various Acts which enables wife to seek and claim maintenance from the able-bodied husband, however, a duty is caused on the Family Court is to assess the situation of men (husband) whether he is able-bodied or disabled person, as the case may be, before awarding reasonable award, and shall not unreasonably and arbitrary award in a blind fold approach.

15. As stated supra, a duty is caused upon the Family Court and the Magistrate Court dealing with maintenance cases. While, dealing with the maintenance claim of wife, under various Act or laws, as stated supra, has to adjust the smaller maintenance awarded amount under one provision of law as against the higher maintenance award in the other, on the principle of same relief under different provisions/laws. Besides, Family Court shall not allow wife to rob husband till the last penny under guise of maintenance award under different provision of the various laws, as it is found in the instant case.

16. The Family Court shall not use the popular adage of 'Beg, borrow or steal' to pay maintenance amount since begging and stealing are prohibited under codified law of prevention of Begging Act and under Section 379 of I.P.C respectively. Thus, it is futile for the Family Court to compel husband to do prohibited Act of begging or stealing when the husband behave like a ' frugal'. When the husband is expected to behave like prudent man in providing maintenance money to the wife, on future, Court can award maintain and its enforcement.

17. The different provisions under different Act is only to empower the women (wife) so as to redress the grievance of the women folk belongs to different strata of the Society and depending upon their domestic and matrimonial home conditions, they can approach the different forum, civil or criminal, for the claim of maintenance.

18. However once an order of maintenance has been granted in one of the forum, the subsequent application on the very same relief on maintenance be raised in the other forum, the Court dealing with the second petition, while dealing with the award of maintenance as to take note of the amount already awarded and to pass suitable order either modifying the maintenance award already granted with the other proceedings which is specifically stated in under 127 of Cr.P.C which this Court is of the considered view that the trial Court has miserably failed to understand in the instant case.

19. The trial Court appears to have been over looked the provisions of under Section 125 and 127 of Cr.P.C granting of remedy of similar relief under different Act to redress the grievance of the wife. Since after going through the impugned order passed by the trial Court, it appears that there is no adjustment has been made with regard to the amount already paid by the husband in the H.M.O.P award amount with that of the proceedings initiated under Section 125 of Cr.P.C. Moreover, even maintenance awarded under 175 of Cr.P.C in M.C.No.69 of 2007 does not seems to have taken note of the earlier award of maintenance passed in H.M.O.P and there is nor even discussion on this point and it appears that there is no application of the mind as to what amount is to be paid after adjusting the earlier amount of maintenance award and hence, relying the principal as stated above namely that any subsequent proceedings wherein maintenance has been raised by the wife, the award of maintenance granted in the prior proceedings has to be taken note of and there should be a specific order to that effect. Thereafter, the recovery or non-compliance of the modified order of the maintenance has to be dealt with by the Family Court and with these observations, the order passed by the trial Court is not sustainable in law on the above stated principal.

20. As stated supra, the impugned order dated 18.07.2013 in C.M.P.No.535 of 2011 is set aside and matter is remanded back

to the Family Court with a direction to redo the exercise and re-determined the balance of the amount if any as contended by the petitioner-husband and to pass order within a period of 12 weeks from the date of receipt of a copy of this order.

21. In the result, the order dated 18.07.2013 in C.M.P.No.535 of 2011 is set aside and the order of attachment passed by the Family Court, Coimbatore to the tune of Rs.1,38,750/- is lifted and the matter is remanded back to the Family Court and accordingly, this Criminal Revision Petition is allowed to the extent indicated above. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

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To

1.The Judge,
The Family Court, Coimbatore.

Copy To

The Section Officer,
Crl. Section, High Court,
Madras.

+1cc to Mr.A.Sivaji, Advocate SR.No.89103

CRL.RC. No.1070 of 2013and
M.P.No.1 of 2013and
Crl.M.P.No.8504 of 2017

RSY (CO)
GN(03/02/2018)

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