



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.(MD) No.15083 of 2018
and
CrI.M.P.(MD) No.6676 of 2018

Balasubramanian

... Petitioner/Respondent

Vs.

1.Thangaselvi

2.Minor.Mavo Tamilarasu

3.Minor.Cheguvera Prabakaran

...Respondents/ Petitioner

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the proceedings in M.C.No.4 of 2017 pending on the file of the learned Judicial Magistrate, No.I, Virudhunagar and quash the same.

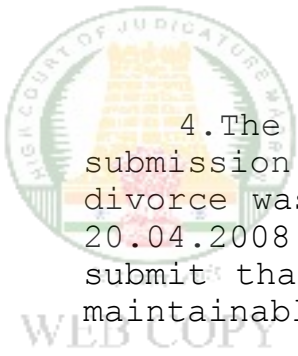
For Petitioner	: Mr.K.Renganathan
For Respondents	: No appearance

ORDER

This Criminal Original Petition has been filed challenging the proceedings initiated in M.C.No.4 of 2017 on the file of the learned Judicial Magistrate No.I, Virudhunagar.

2.The first respondent is the wife of the petitioner and the second and third respondents are the children. The respondents have initiated proceedings under Section 125 Cr.P.C., against the petitioner's claiming monthly maintenance of Rs.10,000/- to the first respondent and Rs.5,000/- each to the second and third respondents. After notice was issued to the petitioner, the present petition has been filed to quash the proceedings in M.C.No.4 of 2017.

3.The learned counsel for the petitioner would submit that the respondents have initiated proceedings in O.S.No.45 of 2014 before the District Munsif Court, Aruppukottai, claiming maintenance and the same is pending. Therefore, the learned counsel for the petitioner would submit that a parallel proceedings under Section 125 Cr.P.C., cannot be maintained before the Court below.



4.The learned counsel for the petitioner makes a further submission that H.M.O.P.No.57 of 2008 filed by the petitioner for divorce was allowed by way of an ex parte judgment and decree dated 20.04.2008. Therefore, the learned counsel for the petitioner would submit that the present petition filed in M.C.No.4 of 2017 is not maintainable.

5.The learned counsel for the petitioner also relied upon the judgment of the Bombay High Court in the case of Ravindra Haribhau Karmarkar Vs. Mrs.Shaila Ravindra Karmarkar reported in 1992 CriLj 1845, wherein, the Bombay High Court has held that the wife cannot maintain an application under 125 Cr.P.C., when she has already chosen to participate against the husband by filing a suit claiming for maintenance. The learned counsel for the petitioner would specifically rely upon the following para in the said judgment, which is extracted here under:

17.The non-applicants could not be allowed to ride two horses at a time (two simultaneous proceedings in two different Courts) and could not be permitted to continue the maintenance proceedings u/s 125 of Cr.P.C., when they had already chosen the alternative remedy in Reg.C.S.No.227/86. It is well settled law that the judgment of civil Court shall prevail over the judgment of criminal Court. The natural justice demands that parallel proceedings cannot be allowed to continue in different Courts.

6.In this case, it is seen that in respect of the suit filed in the year 2014 claiming maintenance, no final adjudication has been made for the last four years and the same is pending. The respondents, who are the wife and two minor sons will have to maintain themselves in the meantime. Insofar as the ground raised by the learned counsel for the petitioner that they are already divorced, that cannot be a bar for the first respondent to maintain a petition under Section 125 Cr.P.C. Since under Section 125 Cr.P.C., a wife also includes a woman, who has been divorced from her husband.

7.Insofar as the other ground raised by the learned counsel for the petitioner, relying upon the judgment of the Bombay High Court, this Court with respect is not able to agree with the judgment of the Bombay High Court. The proceedings initiated under Section 125 Cr.P.C., are summary in nature. Admittedly, till today, the suit that was filed by the respondents claiming for maintenance is pending and no final orders have been passed. It is nearly four years since the suit was filed and the respondents cannot be waiting endlessly for the suit to be disposed of since it involves their livelihood.

8.The respondents are always entitled to maintain an application under Section 125 Cr.P.C., since the proceedings are summary in nature. Even where different proceedings have been initiated claiming for maintenance, the same cannot be straight away



a bar since the Court, which passed the order on the maintenance petition, can always take into account the order of maintenance that has been granted in another proceeding and accordingly, fix the amount of maintenance. There cannot be an absolute bar on the wife maintaining a petition under Section 125 Cr.P.C., more particularly, since the suit filed by the wife has not seen the light of the day. In the meantime, the wife and the minor children will have to take care of their livelihood.

9.The petitioner, who is the husband has admittedly not paid any maintenance to the respondents. In the affidavit filed before this Court, the petitioner states that only twice during the year 2013, a sum of Rs.2,500/- was paid to the children. Apart from that, not a single pie has been paid by the petitioner to the respondents. Therefore, the petitioner cannot be allowed to take a technical plea before this Court on the ground that since the wife has already filed a suit for maintenance and the same is pending. She along with her minor children cannot maintain a petition under Section 125 Cr.P.C., This Court is not in agreement with the submission made by the learned counsel for the petitioner.

10.Accordingly, this criminal original petition is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

- 1.The Judicial Magistrate No.I,
Virudhunagar.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO MR.K.RENGANATHAN, ADVOCATE IN SR.NO.82097.

MM

DS SV SAR-4 11.10.2018 3P/4C

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