

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2019

CORAM

THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.1125 of 2016
in

Crl.M.P.No.496 of 2016

Mohanambal

.. Petitioner

Vs.

Annadurai

.. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order dated 12.08.2015 made in Criminal Revision Petition No.29 of 2015, on the file of the learned District and Sessions Judge, Cuddalore at Virudhachalam by confirming the order passed in C.M.P.No.3356 of 2011, dated 01.08.2014 on the Judicial Magistrate No.I, Virudhachalam.

For Petitioner : Mr.N.Manokaran

For Respondents: M/s.A.L.Gandhimathi
and L.Palanimuthu

O R D E R

This petition has been filed by the wife challenging the order passed in criminal Revision Petition wherein the enhancement of compensation sought for by the petitioner was rejected by the revision Court by an order dated 12.08.2015.

2. The petitioner filed a petition seeking for maintenance under Section 125 of Cr.P.C in M.C.No.20 of 2004. By an order dated 17.07.2006, the monthly maintenance was fixed at the sum of Rs.1,500/- and the respondent was also directed to pay a sum of Rs.2,000/- per year for cloth and medical expenditure. After sometime in the year 2011, the petitioner filed a petition under Section 127 of Cr.P.C, seeking for enhancement of maintenance amount from Rs.1,500/- to Rs.15,000/- and also claimed a sum of Rs.25,000/- towards cloth and medical expenditure. The maintenance amount was claimed on the basis that the respondent was working in NLC as a Technical Grade-III employee and is getting salary of nearly Rs.41,398/- per month and inspite of

the same he has not paid any maintenance more than Rs.1,500/- and the said maintenance amount is grossly inadequate for the petitioner to maintain herself.

3. The Judicial Magistrate No.I, Virudhachalam, by an order dated 01.08.2014, after considering the entire materials available on record and also the facts and circumstances of the case, thought it fit to fix the maintenance amount at Rs.5,000/- per month and also fixed Rs.10,000/- per year towards cloth and medical expenditure.

4. This order was challenged both by the petitioner and the respondent and both the revision petitions came to be dismissed and thereby the order of the Judicial Magistrate No.I, Virudhachalam, was confirmed. Aggrieved by the same, the wife has now preferred this petition under Section 482 of Cr.P.C on the ground that the revisional Court has not given any reasons for the dismissal of the petition seeking for enhancement and thereby has occasioned in the failure of justice.

5. The learned counsel for the petitioner submitted that the Judicial Magistrate after coming to the categorical finding that the respondent is earning a monthly salary of Rs.41,398/- as evidenced by Ex.R8, ought to have ordered a monthly maintenance of Rs.15,000/- to the petitioner. The learned counsel further submitted that the revisional Court while dismissing the petition did not give any reason and has merely confirmed the order of the Judicial Magistrate. The learned counsel further submitted that the petitioner has been driven to file a petition under Section 128 of Cr.P.C, against the respondent seeking for the payment of arrears of maintenance and even the monthly maintenance that was fixed by the trial Court is not being properly paid by the respondent. The learned counsel further submitted that this Court has sufficient jurisdiction to interfere with the order passed by the revisional Court and in order to substantiate the same, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in Bhuwan Mohan Singh Vs.Meena and others reported in (2015) 6 SCC page 353.

6. Per contra, the learned counsel for the respondent submitted that the respondent has agreed to the maintenance amount fixed by the trial Court and is paying the monthly maintenance of Rs.5,000/- without fail. The learned counsel further submitted that the trial Court has fixed the amount of maintenance after taking into consideration the entire materials available on record and the same has also been confirmed by the revision Court and this Court cannot interfere with the same in exercise of its jurisdiction under Section 482 of Cr.P.C and virtually the present petition is in the nature of second

revision which is barred under Section 397(3) of Cr.P.C. In order to substantiate his submissions, the learned counsel relied upon the judgement in Rajathi Vs.C.Ganesan reported in (1999) 6 SCC page 326.

7. This Court has carefully considered the submissions made on either side and also the materials available on record.

8. There is no dispute with regard to the relationship between the parties and also of the fact that the petitioner is working in NLC as a Technical Grade-III employee. There is also no dispute with regard to the monthly salary of the petitioner and the same is borne out by Ex.R8. The only issue that requires to be considered is whether the petitioner is entitled for an enhanced compensation than the one that was fixed by the trial Court.

9. A reading of the order of the revision Court manifestly reveals the fact that the revisional Court has not given any reasons as to why it is denying the enhancement of maintenance in favour of the petitioner. The revisional Court has merely stated that after various deductions, the respondent is receiving a lesser amount and therefore the maintenance amount of Rs.5,000/- is reasonable.

10. At this point of time, it will be relevant to refer to the judgment in Bhuwan Mohan Singh Vs.Meena and others reported in (2015) 6 SCC page 353 referred supra. The relevant portion of the judgment is extracted hereunder:

7.At the outset, we are obliged to reiterate the principle of law how a proceeding under Section 125 of the Code has to be dealt with by the court, and what is the duty of a Family Court after establishment of such courts by the Family Courts Act, 1984. In Dukhtar Jahan v. Mohd. Farooq the Court opined that: (SCC p.631, para 16)

"16. ... Proceedings under Section 125 [of the Code], it must be remembered, are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner."

8. A three-Judge Bench in Vimala (K.) v. Veeraswamy (K.), while discussing about the basic purpose under Section 125 of the Code, opined that: (SCC p. 378, para 3)

"3. Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife."

9. A two-Judge Bench in *Kirtikant D. Vadodaria v. State of Gujarat*, while adverting to the dominant purpose behind Section 125 of the Code, ruled that: (SCC p.489, para 15)

"15. ... While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation."

10. In *Chaturbhuj v. Sita Bai*, reiterating the legal position the Court held: (SCC p. 320, para 6)

"6. ... Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Capt. Ramesh Chander Kaushal v. Veena Kaushal* falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position

was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat."

11. Recently in Nagendrappa Natikar v. Neelamma, it has been stated that it is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children.

12. The Family Courts have been established for adopting and facilitating the conciliation procedure and to deal with family disputes in a speedy and expeditious manner. A three-Judge Bench in K.A. Abdul Jaleel v. T.A. Shahida, while highlighting on the purpose of bringing in the Family Courts Act by the legislature, opined thus: (SCC p.170, para 10)

"10. The Family Courts Act was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith."

13. The purpose of highlighting this aspect is that in the case at hand the proceeding before the Family Court was conducted without being alive to the Objects and Reasons of the Act and the spirit of the provisions under Section 125 of the Code. It is unfortunate that the case continued for nine years before the Family Court. It has come to the notice of the Court that on certain occasions the Family Courts have been granting adjournments in a routine manner as consequence of which both the parties suffer or, on certain occasions, the wife becomes the worst victim. When such a situation occurs, the purpose of the law gets totally atrophied. The Family Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. When we say this, we do not mean that the Family Courts should show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation. A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before it. It not only gives rise to more family problems but also gradually builds unthinkable and Everestine bitterness. It leads to the cold

refrigeration of the hidden feelings, if still left. The delineation of the lis by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to emotional fragmentation and delay can feed it to grow. We hope and trust that the Family Court Judges shall remain alert to this and decide the matters as expeditiously as possible keeping in view the Objects and Reasons of the Act and the scheme of various provisions pertaining to grant of maintenance, divorce, custody of child, property disputes, etc.

14. While dealing with the relevant date of grant of maintenance, in *Shail Kumari Devi v. Krishnan Bhagwan Pathak*, the Court referred to the Code of Criminal Procedure (Amendment) Act, 2001 (50 of 2001) and came to hold that: (SCC p.639, para 21)

"21. ... Even after the amendment of 2001, an order for payment of maintenance can be made by a court either from the date of the order or where an express order is made to pay maintenance from the date of application, then the amount of maintenance can be paid from that date i.e. From the date of application."

The Court referred to the decision in *Krishna Jain v. Dharam Raj Jain* wherein it has been stated that: (*Shail Kumari Devi* case, SCC p. 645, para 37)

"37. ... To hold that, normally maintenance should be made payable from the date of the order and not from the date of the application unless such order is backed by reasons would amount to inserting something more in the sub-section which the legislature never intended. The [High Court had] observed that it was unable to read in sub-section (2) laying down any rule to award maintenance from the date of the order or that the grant from the date of the application is an exception."

The High Court had also opined that whether maintenance is granted from the date of the order or from the date of application, the Court is required to record reasons as required under sub-section (6) of Section 354 of the Code.

15. After referring to the decision in Krishna Jain, the Supreme Court adverted to the decision of the High Court of Andhra Pradesh in K. Sivaram v. K. Mangalamba wherein it has been ruled that the maintenance would be awarded from the date of the order and such maintenance could be granted from the date of the application only by recording special reasons. The view of the learned Single Judge of the High Court of Andhra Pradesh stating that it is a normal rule that the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance was not accepted by this Court. Eventually, the Court ruled thus: (Shail Kumari Devi case, SCC p.647, para 43)

"43. We, therefore, hold that while deciding an application under Section 125 of the Code, a Magistrate is required to record reasons for granting or refusing to grant maintenance to wives, children or parents. Such maintenance can be awarded from the date of the order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary. No special reasons, however, are required to be recorded by the court. In our judgment, no such requirement can be read in sub-section (1) of Section 125 of the Code in absence of express provision to that effect."

16. In the present case, as we find, there was enormous delay in disposal of the proceeding under Section 125 of the Code and most of the time the husband had taken adjournments and sometimes the court dealt with the matter showing total laxity. The wife sustained herself as far as she could in that state for a period of nine years. The circumstances, in our considered opinion, required grant of maintenance from the date of application and by so granting the High Court has not committed any legal infirmity. Hence, we concur with the order of the High Court. However, we direct, as prayed by the learned counsel for the appellant, that he may be allowed to pay the arrears along with the maintenance awarded at present in a phased manner. The learned counsel for the respondents did not object to such an arrangement being made. In view of the aforesaid, we direct that while paying the maintenance as fixed by the learned Family Court Judge

per month by 5th of each succeeding month, the arrears shall be paid in a proportionate manner within a period of three years from today.

17. Consequently, the appeal, being devoid of merits, stands dismissed.

11. It is clear from the above judgment that Section 125 of Criminal Procedure Code is a means to achieve a social purpose and the object is to prevent vagrancy and destitution. It gives effect to the fundamental duty vested upon a man to maintain his wife who is unable to maintain herself. While considering the petition for fixation of the amount of maintenance, the Court has to take into consideration, the income status of the husband and the bare minimum requirements of the wife who is unable to maintain herself. At the time of fixing the amount of maintenance, the standard of living to which the wife is used to must also be taken into consideration.

12. It is true that the petition under Section 482 of Cr.P.C should not be entertained as a second revision, since the same is barred under Section 397(3) of the Criminal Procedure Code. However, there is no absolute bar placed on this Court in exercise of its jurisdiction under Section 482 of Cr.P.C and wherever this Court finds that there is grave miscarriage of justice or there is failure of justice, the same can always be taken note of, and appropriate orders can be passed by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

13. In the facts of the present case, this Court is of the considered view that the revisional Court ought to have given reasons as to why the petitioner's wife is not entitled for enhancement of maintenance. The revisional Court cannot mechanically confirm the order of the trial Court and if such orders are sustained, it will defeat the very jurisdiction vested upon a Criminal Court under Sections 397 and 401 of Cr.P.C. On this ground alone, this Court has to interfere with the order passed in the Criminal Revision Petition.

14. However, this Court does not want to again send back the parties to once again undergo the ordeal of conducting proceedings before the revisional Court for fixing the enhanced maintenance and this Court itself wants to fix the amount of maintenance by taking into consideration the passage of time and also the increase in salary of the respondent in the last 8 years.

15. This Court deems it fit to enhance the amount of maintenance payable by the respondent to a sum of Rs.10,000/-

per month. However, this Court does not want to mulct the respondent by giving effect to this enhancement with retrospective effect and enhanced maintenance amount shall be payable from the month of July 2019.

16. In the result, the order passed by the learned District and Sessions Judge, Cuddalore in Criminal Revision Petition No.29 of 2015, is hereby set aside and this Criminal Original Petition is allowed with the following directions:

(a) The respondent is directed to pay a monthly maintenance of Rs.10,000/- from July 2019 onwards on or before 5th of every succeeding month;

(b) The respondent shall pay a sum of Rs.20,000/- every year towards cloth and medical expenditure of the petitioner';

(c) The respondent shall pay the entire arrears of maintenance if any within a period of six weeks from the date of receipt of a copy of this order, as per the orders passed by the learned Judicial Magistrate No.I, Virudhachalam, dated 01.08.2014 and made in C.M.P.No.3356 of 2011. Consequently, connected miscellaneous petition is closed.
ub/rna

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The District and Sessions Judge,
Cuddalore at Virudhachalam.

2.The Judicial Magistrate No.I,
Virudhachalam.

+1cc to Mr.AL.Ganthimathi, Advocate, SR.No.46029

+1cc to Mr.N.Manokaran, Advocate, SR.No.46003

Cr1.O.P.No.1125 of 2016

Kak(15/07/2019)