

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 03.10.2018
DELIVERED ON : 22.01.2019

CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P.No.20192 of 2010 &
M.P.No.1 of 2010
and
Crl.R.C.No.611 of 2012 &
M.P.No.1 of 2012

Crl.O.P.No.20192 of 2010

1.M.Abdul Gaffar
2.ParveenPetitioners

Vs

1.State rep. by Protection Officer,
Domestic Violence Act,
District Welfare Office,
Collectorate, B-Block, Sathuvachari,
Vellore, Vellore District.
2.ParveenRespondents
(Impleaded the 2nd respondent as per the order
of this Court dated 25.07.2011 in MP.No.1/2011)

Prayer: Criminal Original Petition filed under Section 482 of
Cr.P.C., to quash the Domestic Incident Report filed by the
Respondent against these petitioners in M.C.No.1 of 2010 on the
file of the Judicial Magistrate No.I, Vellore under Section 9(b)
and 37(2) of Protection of Women from Domestic Violence Act,
2005.

Crl.R.C.No.611 of 2012

M.Abdul GaffaPetitioner

Vs

M.Parveen ...Respondent

Prayer: Criminal Revision Case filed under Section 397 r/w 401
of Cr.P.C., against the fair and final order dated 12.01.2012
passed in M.C.No.31 of 2009 on the file of the learned Chief
Judicial Magistrate at Vellore.

(In both cases)
For Petitioners : Ms.S.Suseela Devi
(both cases)

For Respondents: Mrs.T.P.Savitha
Government Advocate (Crl.Side)
(for R1 in Crl.O.P.No.20192 of 2010)

Mr.E.Kannadasan
(for R2 in Crl.OP.No.20192 of 2010 &
for Respondent in Crl.RC.No.611/12)

ORDER

The Criminal Revision is filed by the husband challenging the order passed in M.C.No.31 of 2009 on the file of the learned Chief Judicial Magistrate, Vellore dated 12.01.2012 under section 125(i) of Cr.P.C. wherein the learned trial Judge directed the husband to pay monthly maintenance of Rs.5,000/- per month from the date of petition to his wife.

2.The Criminal Original Petition is filed to quash the domestic incident report filed by the respondent in M.C.No.1 of 2010 on the file of the learned Judicial Magistrate No.1, Vellore dated 04.12.2009 under sections 9(a) and 37(2) of Protection of Women from Domestic Violence Act 2005.

3.Brief case of the petitioner in Crl.R.C.No.611 of 2012:

The petitioner Parveen filed the maintenance application under section 125 of Cr.P.C. against her husband/respondent namely Abdul Gaffer to pay Rs.10,000/- per month as maintenance.

4.The petitioner was married to the respondent on 30.01.2005 at Vellore and her parents gave dowry of Rs.50,000/- including 25 sovereigns of gold and 4 Lakhs was spent towards marriage expenses and they both lived happily for two months and after that the petitioner found out the immoral life led by the respondent with his brother's wife. When the petitioner questioned the respondent, he showed his indifferent behavior and started to abuse and assault the petitioner and demanded further sovereigns of gold and two lakhs cash. The respondent completely ignored the petitioner in leading the matrimonial life and even failed to fulfill the basic medical needs and food. The respondent is working as Assistant in B.D.O.s Office earning not less than Rs.15,000/- per month. Hence the petitioner filed maintenance.

5.The respondent denied allegation of dowry and illicit intimacy with his sister-in-law and also denied that he earns Rs.15,000/- per month. The Respondent further alleged that he divorced the petitioner as per Muslim Law and she cannot claim maintenance against him.

6.Before the trial Court, the petitioner herself examined as PW1 and marked Exhibits-P1 to P7. The respondent examined himself as RW1 and marked Exhibits-R1 to R12.

7.On completion of the trial, the learned trial judge after appreciating the evidences of both sides, directed the respondent to pay a monthly maintenance of Rs.5,000/- per month from the date of petition.

8.Brief case of the petitioner in Crl.O.P.20192 of 2010:

The petitioner/wife filed the complaint against the respondent/husband under section 19, 20 and 21 of the Protection of the Women's from Domestic Violence Act 2005 before the learned Judicial Magistrate No.1, Vellore. The learned trial Magistrate took cognizance of the offence and directed the protection officer to file the domestic incident report and the same was filed before the trial Court on 04.12.2009 against the respondent /husband and his brother's wife namely Parveen. After appreciating the report, the learned trial Court issued summons to the respondents on 27.01.2010.

9.Aggrieved over the same, the respondents 1 and 2 filed the quash petition in Crl.O.P.No.20192 of 2010 before this Hon'ble Court to quash the proceedings in M.C.No.1 of 2010.

10.The learned counsel for the Petitioners submits that the respondent filed the report without conducting enquiry as prescribed in the Domestic Violence Act 2005.

11.The learned counsel for the Petitioners submits that the pending M.C.No.31 of 2009 on the file of learned Chief Judicial Magistrate, Vellore, the Complainant depositions are contradictory to her complaint.

12.The learned counsel for the petitioner submits that the Court below ought to have seen that the Respondent here in and the Petitioner in lower Court refused to live with the petitioner and the petitioner herein sent so many letters inviting the respondent to join with the petitioner and sent Thalaknama to the respondent herein and as per the Muslim Law the marriage between the petitioner and the respondent was validly dissolved.

13.The learned counsel for the petitioner submits that the respondent lived with the first petitioner only for a very short period and lot of misunderstanding between 1st petitioner and respondent and finally pronounced Talaq on 09.04.2009.

14.I heard Ms.S.Suseela Devi, learned counsel for the petitioners in both cases, Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the 1st respondent in Crl.O.P.No.20192 of 2010 and Mr.E.Kannadasan, learned counsel for the 2nd respondent in Crl.O.P.No.20192 of 2010 and respondent

in CrI.R.C.No.611 of 2012 and perused the entire materials available on record.

15.It is seen from the records that this Court directed the petitioners to pay a sum of Rs.2 Lakhs to the credit of M.C.No.31 of 2009 on the file of the learned Chief Judicial Magistrate, Vellore, on or before 29.11.2017 in its order dated 09.11.2017.

16.On 20.02.2018, the petitioner/accused paid a sum of Rs.2 Lakhs towards the arrears of maintenance to the respondent by way of cash and this Court directed the registry to refer this case to the Mediation Centre for the purpose of settlement as requested by the learned counsel for the petitioner. Again both cases were sent to this Court due to non- settlement.

17.Both cases were taken together and finally heard.

18.The law with respect to applications for maintenance under Section 125 of Cr.P.C. vis-a-vis Mahomedan Law needs to be examined at this stage. To begin with, it must be said that Section 125 of Cr.P.C. is a secular provision appearing in Code of Criminal Procedure. It provides a summary remedy and is applicable to all persons belonging to all religions and has no relationship with the personal law of the parties. The religion professed by the parties has no place in the scheme of Section 125 of Cr.P.C. As was aptly observed by the Hon'ble Supreme Court in Mohd. Ahmed Khan v. Shah Bano Begum in AIR 1985 SC 945, "Whether the spouses are Hindus or Muslims, Christians or Parsis, pagans or heathens, is wholly irrelevant in application of its provision. The reason for this is axiomatic, in the sense that Section 125 of Cr.P.C. is a part of the Code of Criminal Procedure, not of the Civil Laws which define and govern the rights and obligations of the parties belonging to particular religions, like the Hindu Adoptions and Maintenance Act, and Shariat, or the Parsi Matrimonial Act. Section 125 of Cr.P.C. was enacted in order to provide a quick and summary remedy to a class of persons who are unable to maintain themselves.

19.It may further be noticed that Muslim Women Act deals exclusively with Muslim divorced women, it does not at all deal with Muslim wives. A Muslim wife, who is unable to maintain herself, can therefore invoke the provisions of Section 125 of Cr.P.C. and there is nothing which comes in her way. Naturally, she can also prosecute any of her such applications which may be pending at the time of commencement of the Muslim Women Act. But the moment she is divorced or obtains a divorce, the provisions of the Muslim Women Act would come into play and her application would become governable by its provisions for the period after the date of divorce.

20.The learned counsel for the respondent however argued that the Muslim Personal Law would override the Law of Contract as well as the statutory law as framed under the Act of 1986. In

the opinion of this Court, there is no merit in this contention. Act of 1986 itself was passed for modifying the personal law of the Muslims and is an alternative mode of giving respite to a divorced muslim woman to whom the husband is not prepared to give relief under Section 125 of Cr.P.C. on the ground that it interferes with the personal law of the parties. A reading of Section 5 of the Act of 1986 would reveal that any muslim husband and wife can agree to abide by provisions of Sections 125 to 128 of the Code of Criminal Procedure. In view of this matter it is difficult to agree with the learned counsel for the applicant that the personal law will override even the Act of 1986. The law made by Parliament is supreme, as it is made under the Constitution and Parliament has full power to modify any personal law under our Constitution, if it so desires.

21. Even if for arguments sake, it is supposed that applications for maintenance under Section 125 of Cr.P.C. initially made by Muslim wives who came to be subsequently divorced do not come within the purview of the Act, their fate would not be any different.

22. On careful re-appreciation of evidences adduced by both parties in M.C.No.31 of 2009, I am of the view that the issue raised by the petitioner for quashing the domestic incident report needs to be considered. As per the averments made in both complaints, the wife of the petitioner alleged serious allegations against her husband particularly having immoral life with his brother's wife. It is admitted fact that the legality and consummation of marriage were not disputed but the petitioner /husband denied his immoral character as suspected by her wife. It is also an admitted fact that the brother of the petitioner was employed abroad. The claim of dowry and other allegations are also countered by the petitioner as frivolous. Curiously, the petitioner denies all the allegations made against him by the respondent but he did not explain the contrary. Exhibit P5 document was admitted by both parties regarding the panchayat conducted before the Muthavalli. Further the petitioner has admitted that he is a Junior Assistant in B.D.O.s Office.

23. In view of the above, both the Criminal Revision Case filed in CrI.R.C.No.611 of 2012 and the Criminal Original Petition in CrI.O.P.No.20192 of 2010 are dismissed and the maintenance order passed in M.C.No.31 of 2009 is confirmed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1.The Chief Judicial Magistrate,
Vellore.

2.The Judicial Magistrate No.1,
Vellore.

3.The Protection Officer,
Domestic Violence Act,
District Welfare Office,
Collectorate, B Block,
Sathuvachari,
Vellore, Vellore Dist.

Copy To

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

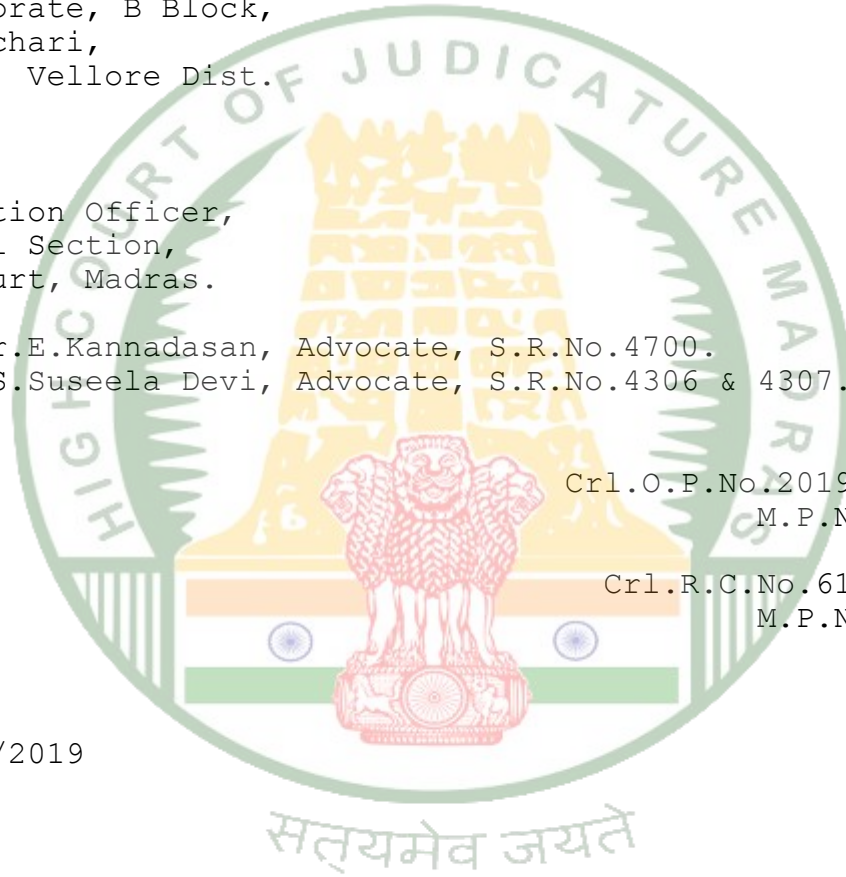
+1cc to Mr.E.Kannadasan, Advocate, S.R.No.4700.

+2ccs to S.Suseela Devi, Advocate, S.R.No.4306 & 4307.

Cr1.O.P.No.20192 of 2010 &
M.P.No.1 of 2010
and
Cr1.R.C.No.611 of 2012 &
M.P.No.1 of 2012

SAI (CO)

rrs 22/02/2019



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