

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
Crl.R.C.No.155 of 2018
and
C.R.P.(PD). No.4740 of 2017
&
C.M.P.No.22305 of 2017

Crl.R.C.No.155 of 2018

1. B.Sai Archana

2. S.Aishwarya (Minor) ... Petitioners/Petitioners

Vs.

S.Suresh ... Respondent/Respondent

Prayer: This Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure, to allow this Criminal Revision Case and set aside the order of the Principal Judge, Family Court in M.C.No.9 of 2012 dated 22.12.2016.

For Petitioners : Mr.R.Srinivas

For Respondent : M/s.Gurudhananjay

C.R.P.(PD). No.4740 of 2017

B.Sai Archana ... Petitioner/Appellant/Petitioner

Vs.

S.Suresh ... Respondent/Petitioner/Respondent

Prayer: This Civil Revision filed under Article 227 of Constitution of India, to allow this Civil Revision Case and set aside the order of the IV Additional Judge, Family Court, Chennai in I.A.No.1840 of 2017 in O.P.No.2669 of 2010 dated 11.10.2017 and allow the said I.A. No.1840 of 2017.

For Petitioner : Mr.R.Srinivas

For Respondent : Ms.Radha gopalan

C O M M O N O R D E R

The Criminal Revision Case has been filed to set aside the order made in M.C.No.9 of 2012 dated 22.12.2016 passed by the Family Court, Chennai.

2. The first petitioner and the respondent are wife and husband. The second petitioner is the minor daughter. Originally the husband filed a petition in H.M.O.P.No.2669 of 2010 for divorce. The wife filed a petition in I.A.229 of 2011 in the above divorce Original Petition for interim maintenance and the same was allowed to award interim maintenance at the rate of Rs.27,000/- per month by an order dated 27.03.2011. Thereafter, the wife filed a petition in M.C.No.9 of 2012 under Section 125 of Cr.P.C., seeking monthly maintenance. The learned Family Court Judge, Chennai has awarded the monthly maintenance of Rs.15,000/- per month for wife and Rs.15,000/- for children totally Rs.30,000/- per month towards maintenance. As against the order dated 22.12.2016, the present Criminal Revision case has been filed before this Court.

3. The wife has filed a petition in I.A.No.1840 of 2017 under Section 151 of C.P.C to stay the H.M.O.P. filed by the husband, for non payment of interim maintenance. The learned Judge had erroneously dismissed the petition. As against the order of the learned Family Court Judge, the Civil Revision has been filed before this Court.

4. The learned counsel for the petitioner/wife seeks permission of this Court to withdraw the civil revision case and he has also made an endorsement to that effect. Hence, the Civil Revision case is dismissed as withdrawn.

5. The learned counsel for the petitioner further submitted that the marriage between the first petitioner and the respondent was solemnized on 23.05.2002. Out of their wedlock a female child was born on 26.09.2003. The respondent totally neglected and refused to live with the first petitioner or to maintain the first petitioner. The petitioner is wholly depending on her parents even for her day to day expenses. The respondent has failed to discharge the marital obligations to the petitioner by deserting the petitioner and living away from her without any reasonable cause. The respondent is working as Manager in Merit Software Services Private Limited, Chennai and earning more than a sum of Rs.2,00,000/- per month and also he

has other sources and also rental income. Hence, he may be directed to pay the maintenance for the petitioners. He has placed his reliance on the decisions rendered by the Hon'ble Apex Court in the judgments reported in (1982) 1 SCC 437 (Lilawati Vs. State of Uttar Pradesh and another) and (2014) 16 SCC 715 (Sunita Kachwaha and others Vs. Anil Kachwaha).

6. He would further submit that the Family Court has not considered the actual income of the respondent before awarding monthly maintenance. Without considering the salary of the respondent, the Family Court has simply awarded a sum of Rs.15,000/- per month, each to the first petitioner and as well as to his minor daughter. The salary certificate of the respondent was produced by the petitioner during the month of February 2014, the respondent draws a salary of Rs.1,43,767/- per month, it was not considered by the Family court. Atleast, the 1/3rd amount of the salary ought to have been fixed as monthly maintenance without arriving at a conclusion, the Family Court simply fixed a sum of Rs.30,000/- per month warrants interference. He has also placed his reliance on the decisions rendered by the Hon'ble Apex Court reported in the judgment (2018) 2 Supreme Court Cases (Cri) 723 (Sanjay Kumar Sinha Vs. Asha Kumari and another).

7. The learned counsel for the respondent on the other hand submitted that the wife filed a petition under Section 24 of Hindu Marriage Act, during the pendency of the matrimonial matters. The husband was paying a sum of Rs.27,000/- per month towards interim maintenance, the wife accepted with her consent, the matter was settled and the respondent/husband has been paying the maintenance regularly, the petitioner is also receiving the said amount.

8. Heard, the learned counsel for the petitioners and the respondent and perused the available materials.

9. Now the scope of Section 125 of Cr.P.C, which reads if the husband having sufficient means neglects or refuses to maintain his wife, unable to maintain herself. But, in this case, the husband filed a petition for divorce and wife filed a petition for restitution of conjugal rights. During the pendency of matrimonial matter, the wife filed a petition under Section 24 of Hindu Marriage Act. Both the parties arrived at a settlement, the respondent agreed to pay Rs.27,000/- per month towards interim maintenance, the wife also given her consent for the same. Thereafter, wife filed another petition under Section 125 of Cr.P.C and Court directed the respondent to pay Rs.30,000/- to the petitioner and the minor child towards monthly maintenance. Subsequently, the petitioner/wife filed petition under Section 151 of Cr.P.C for

non payment of interim maintenance that petition was dismissed, against which, the civil Revision petition was filed. When the matters were taken up for final hearing, the learned counsel for the petitioners made an endorsement for withdrawal based on the endorsement the Civil Revision Petition is dismissed as withdrawn.

10. The petitioner/wife has filed a petition under Section 125 of Cr.P.C for monthly maintenance. The learned Family Court Judge, after adverting to the materials placed on record and after hearing both the parties, had partly allowed the case, against which, the petitioners are before this Court with the present criminal revision case.

11. This Court is of the view that pending petitions for divorce and restitution of conjugal rights, filing of petition under Section 125 will not arise, when the petitioner already availed the remedy available under Section 24 of the Hindu Marriage Act. Moreover, the respondent has not neglected to maintain his wife and children or refused to pay the maintenance. He agreed to pay Rs.27,000/- per month towards maintenance, during the pendency of matrimonial petitions and the petitioners also agreed the same and receiving the monthly maintenance regularly. The citations referred to by the learned Counsel appearing for the revision petitioners are not applicable to the facts of the present case on hands.

12. On the date of filing petition under Section 125 of Cr.P.C the wife for herself and for her child was receiving monthly maintenance of Rs.27,000/-p.m, with consent. When she herself agreed to receive the above said amount in the petition filed by her under Section 24 of Hindu Marriage Act, during the pendency of matrimonial matters before the Family Court, she cannot file petition under Section 125 Cr.P.C. The Scope of Section 125 Cr.P.C is very limited and the same is followed by summary procedures. She also withdrawn the Civil Revision Petition filed by her before this Court. However, the matrimonial petitions are pending before Family Court, if she desires so, she can file petition under Section 25 of Hindu Marriage Act for permanent alimony, in which, she can prove income and status of the respondent/husband and get maintenance depends upon the income of the respondent, but not in petition under Section 125 Cr.P.C. Particularly, when she is already getting Rs.27,000/-p.m from the respondent with consent. Since respondent has not neglected or refused to pay maintenance, she is not entitled to invoke the Section 125 of Cr.P.C.

13. Under these circumstances, the contentions raised by the learned counsel for the petitioners is not acceptable and the same is liable to be rejected. This Court finds there is no

infirmity or perversity in the order passed by the Family Judge.

14. In the result, the criminal revision case stands dismissed. The civil revision petition is dismissed as withdrawn. Consequently, connected all the Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Judge,
Family Court, Chennai.

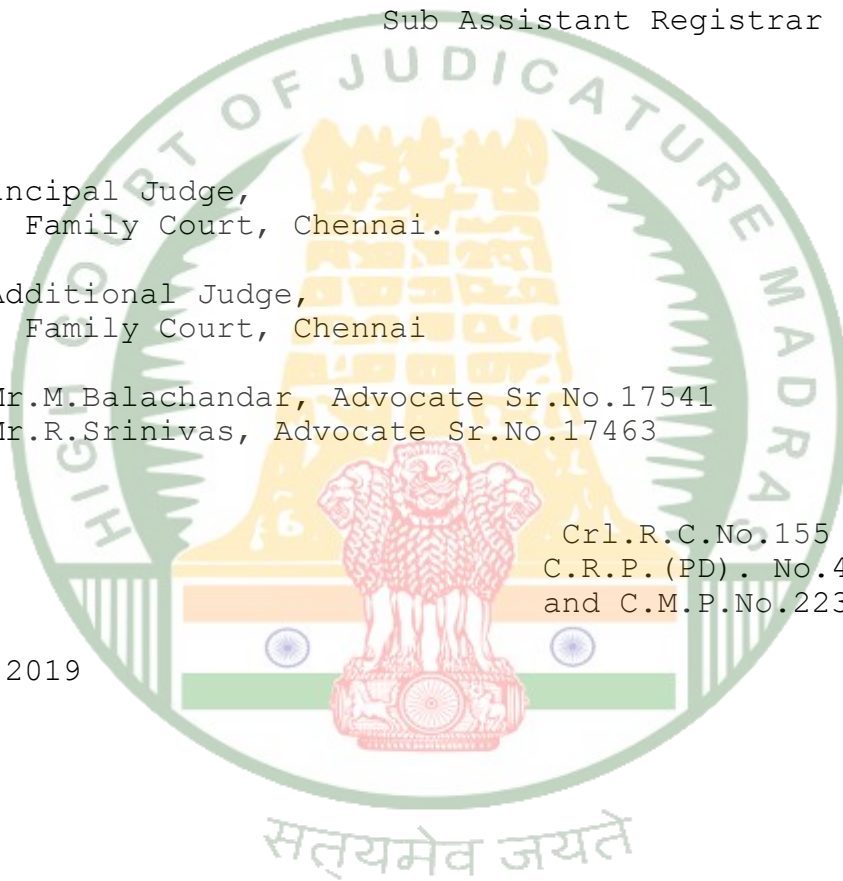
2.The IV Additional Judge,
Family Court, Chennai

+1 cc to Mr.M.Balachandar, Advocate Sr.No.17541

+1 cc to Mr.R.Srinivas, Advocate Sr.No.17463

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CSL/07.03.2019



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