

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Cr1.RC.No.720 of 2018

S.Suganya

... Petitioner

Vs

A.Silambarasan

... Respondent

PRAYER: Criminal Revision case filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the order dated 13.10.2017 made in F.C.M.C.No.10 of 2017 on the file of the Family Court, Dharmapuri and allow the Criminal Revision Case and fix the maintenance.

For Petitioners : Mr.S.Samir Shah

For Respondent : Mr.Arun Anbumani

O R D E R

Revision petitioner is the wife and the respondent is the husband. The marriage between the petitioner and the respondent was solemnised on 18.03.2016 at Dharmapuri. As per the Hindu rites and customs, due to the difference of opinion arose between them the petitioner left the matrimonial home.

2 Thereafter, the petitioner filed a case against the respondent under Section 125 of Cr.P.C., before the Family Court, Dharmapuri, in F.C.M.C.No.10 of 2017. After an elaborate enquiry the learned Family Court Judge, Dharmapuri, dismissed the case. As against the order of dismissal the petitioner filed the present Criminal Revision case before this Court.

3 Heard both sides and perused the materials available on records.

4 Initially the respondent filed a petition against the petitioner under Section 12(1)(c) of Hindu Marriage Act, 1955 for the decree of nullity before the Family Court, Dharmapuri, in F.C.M.O.P.No.41 of 2016, in which the respondent remained exparte. There is no specific averments to prove that the case

under Section 12(1)(c) of Hindu Marriage Act, 1955. Hence, the learned Family Court Judge, Dharmapuri, dismissed the petition.

5 Subsequently, the respondent/husband filed a petition before the Family Court, Dharmapuri on the ground of cruelty and desertion in H.M.O.P.No.126 of 2018 and the same is pending before the Competent Family Court, Dharmapuri. The scope of 125 Cr.P.C., is only if the wife unable to maintain herself and if the husband having sufficient means and neglects to maintain her, the wife can file the petition. Even in that case, if the wife is living separately without any valid reasons then she is not entitled to get maintenance.

6 Admittedly, in this case there is a dispute on whose fault they are living separately. Now the petition for divorce is pending in H.M.O.P.No.126 of 2018. Since, under Section 125 of Cr.P.C., is a summary procedure. There is no dispute with reference to the relationship between the parties and also there is an undisputed fact that the husband is having sufficient means and neglects to maintain his wife, since the wife is unable to maintain herself. Section 125 of Cr.P.C., clearly states that if the wife is living separately without any valid reasons, she is not entitled to get maintenance, which is not in dispute now. Now, petition for divorce filed by the husband before the Family Court is pending in H.M.O.P.No.126 of 2018 the wife is entitled to invoke Section 24 of the Hindu Marriage Act, for interim maintenance. During the pendency of the main petition for divorce., both the parties can establish their rights and liabilities and also responsibilities, since proceedings under 125 Cr.P.C., is the summary procedure and it is a summary in nature.

7 The husband filed a petition for Divorce under Section 12(1)(c) of Hindu Marriage Act, 1955 for the decree of nullity before the Family Court, Dharmapuri, in that petitioner the respondent herein remained exparte. There is no specific averments to prove that the case under Section 12(1)(c) of Hindu Marriage Act, 1955. Hence, the learned Family Court Judge, Dharmapuri, dismissed the petition.

8 Subsequently, the respondent/husband filed a petition for Divorce, on the ground of cruelty which is also pending. This Court does not find any perversity in the order passed by the Family Court, Dharmapuri, while deciding the case filed under Section 125 of Cr.P.C., is a limited scope. Both the parties are at liberty to establish their rights and liabilities in H.M.O.P.No.126 of 2018.

9 This Court does not find any perversity in the order passed by the learned Family Court Judge, Dharmapuri, in

F.C.M.C.No.10 of 2017. Accordingly, this Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

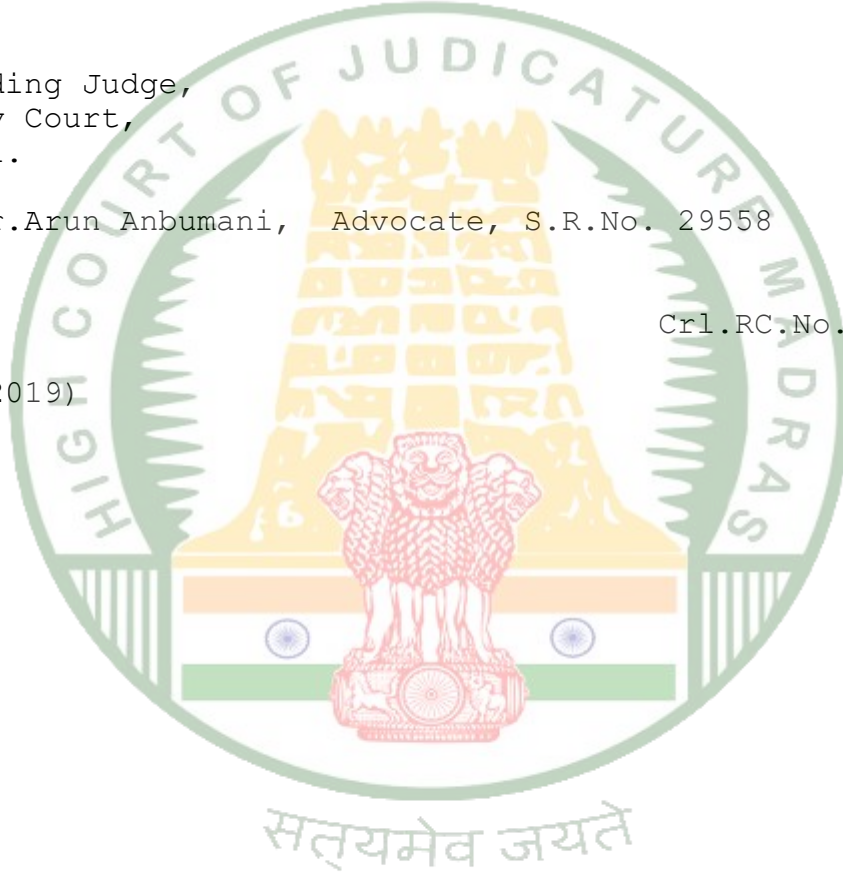
sbn

To
The Presiding Judge,
The Family Court,
Dharmapuri.

+1cc to Mr.Arun Anbumani, Advocate, S.R.No. 29558

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NRL (CO)
GN (14/10/2019)



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