

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Cr1.R.C.No.331 of 2019

Arunachalam

... Petitioner

vs.

Krishnammal

.... Respondent

Petition filed under Section 397 r/w 401 of Cr.P.C. to call for records and set aside the order passed in C.M.P.No.88 of 2018 dated 28.01.2019 on the file of Family Court, Namakkal.

For Petitioner : Mr.C.Gunasekaran
Respondent : Served (No Appearance)

ORDER

Challenging the order dated 28.01.2019 passed by the Family Court, Namakkal in C.M.P.No.88 of 2018, this criminal revision case is filed.

2. The respondent being the wife of the revision petitioner filed CMP.No.88 of 2018 before the Chief Judicial Magistrate, Namakkal, seeking maintenance under Section 127 of Cr.P.C., whereupon, the trial Court, after conducting enquiry and hearing both sides, enhanced the maintenance at the rate of Rs.6,000/- per month from Rs.1,500/- in favour of the respondent/wife. Being aggrieved by the said order, this revision has been filed.

3. Though the respondent was served with notice and name is also printed in the cause list, none appeared on behalf of the respondent.

4. The learned counsel for the petitioner would submit that originally the petitioner filed a suit against the respondent and others for permanent injunction in O.S.No.169 of 2004. The learned Principal District Munsif, Namakkal, placing the compromise decree awarded a sum of Rs.1,500/- towards monthly maintenance to the respondent herein. On the basis of the compromise memo, a decree was passed on 08.02.2006. Subsequently the respondent/wife filed a petition for

maintenance under Section 125 of Cr.P.C. in MC.No.63 of 2015 before the Chief Judicial Magistrate Court, Namakkal. The said petition was dismissed as not pressed. Subsequently she filed the petition under Section 127 of Cr.P.C. in CMP.No.88 of 2018. The learned Family Court Judge failed to consider that there was no order under Section 125 of Cr.P.C. and therefore the petition under Section 127 of Cr.P.C. would not be allowed. Therefore without considering the submission made by the revision petitioner the learned Magistrate allowed the petition filed by the wife under Section 127 of Cr.P.C. and enhanced the maintenance amount from Rs.1,500/- to Rs.6,000/- which needs interference of this Court.

5. Admittedly, the revision petitioner is the husband and the respondent is the wife. In earlier occasion the revision petitioner filed suit for permanent injunction before the Principal District Munsif Court, Namakkal in O.S.No.1609 of 2004 against the respondent and others. The suit was ended in compromise and based on the compromise Memo, the Trial Court ordered maintenance at Rs.1,500/- to the respondent herein. Subsequently the respondent has not filed any petition before the civil Court for enhancement of the maintenance and there is no clause in the compromise decree that the respondent is at liberty to file the petition for enhancement of the monthly maintenance amount. All of a sudden the respondent/wife filed the petition under Section 125 of Cr.P.C. in MC.No.63 of 2015. Subsequently the respondent withdrew the said petition and filed the petition under Section 127 of Cr.P.C. Admittedly the respondent wife has not obtained any order under Section 125 of Cr.P.C. but only obtained a decree from the Civil Court. She is not entitled to invoke Section 127 of Cr.P.C., she has to approach the Civil Court and get appropriate remedy. Instead of filing any application before the civil Court, though the respondent filed petition invoking Section 125 of Cr.P.C. in MC.No.63 of 2015, subsequently the same was dismissed as withdrawn, she filed petition under Section 127 of Cr.P.C. based on the Civil Court decree. It is settled law that if at all wife got any order of maintenance and subsequently if there is any change of circumstances, the respondent can file petition under Section 127 of Cr.P.C. Admittedly, there is no order passed under Section 125 of Cr.P.C. and petition under Section 127 of Cr.P.C. is not maintainable. It is needless to refer the Section 127 of Cr.P.C. It reads as follows:

Section 127 of Cr.P.C., - Alteration in Allowance

"1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife, child, father of

mother, as the case may be, the Magistrate may make such alteration in the allowance as he thinks fit:

Provided that if he increases the allowance, the monthly rate of five hundred rupees in the whole shall not be exceeded

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that—

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order—

(i) in the case where such sum was paid before such order, from the date on which such order was made,

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance after her divorce, cancel the order from the date thereof

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a monthly allowance has been ordered to be paid under section 125, the civil Court shall take into account the sum which has been paid to, or recovered by, such person as monthly allowance in pursuance of the said order."

Family Court Judge failed to consider the scope of Section 127 of Cr.P.C. and simply based on the civil Court decree enhanced the interim maintenance under Section 127 of Cr.P.C. without jurisdiction.

6. Therefore the order passed by the Family Court in CMP.No.88 of 2018 is perverse and is liable to be set aside and

the present criminal Revision petition stands allowed. However the respondent is at liberty to approach the competent Court to get enhancement of the maintenance in accordance with law. Accordingly the criminal revision petition stands allowed. Connected miscellaneous petition is also closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

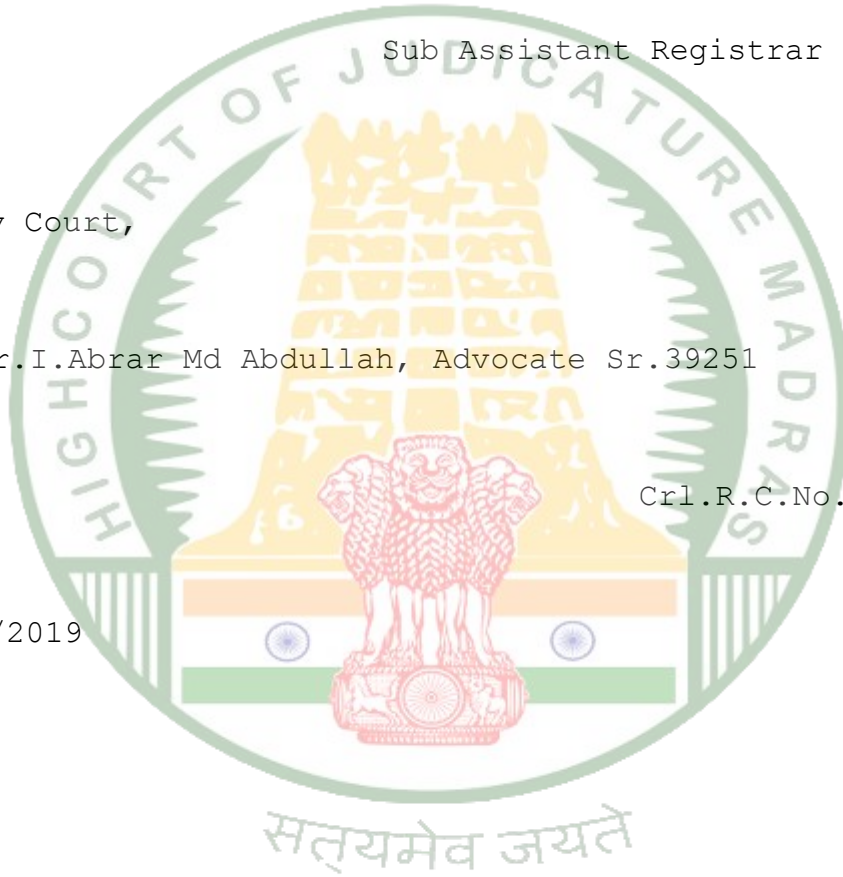
To

The Judge,
The Family Court,
Namakkal.

+1cc to Mr.I.Abrar Md Abdullah, Advocate Sr.39251

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