

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.372 of 2019
and
CrI.M.P.No.5493 of 2019

Suresh ... Petitioner / Respondent

Vs

S.Revathi Respondent / Petitioner

PRAYER: Criminal Revision case filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the order dated 27.02.2019 made in M.C.No.03/2017 by the Court of Judicial Magistrate-II, Walajapet, Vellore District.

For Petitioner : Mr.S.Vijayanand

For Respondent : Mr.P.V.Sudhakar

O R D E R

This Criminal Revision has been filed to set aside the order dated 27.02.2019 in M.C.No.03 of 2017 by the learned Judicial Magistrate-II, Walajapet, Vellore District.

2. The petitioner is the husband and the respondent is the wife. The marriage between them was performed on 20.02.2013 as per Hindu rites and customs. After marriage, they were living separately.

3. Thereafter, the petitioner has filed a petition for Divorce before the Family Court, Bangalore in M.C.No.1637 of 2015 in the year of 2015, which was transferred and renumbered as F.C.O.P.No.250 of 2017 before the Family Court, Vellore. During the pendency of the above case, the respondent/wife has filed a petition under Section 125 Cr.P.C., before the learned Judicial Magistrate, Walajah, Vellore District for claiming maintenance, which was taken on file as M.C.No.3 of 2017. During the pendency of the above maintenance case, the respondent/wife filed a petition under Section 24 of Hindu Marriage Act in I.A.No.668 of 2018, in which, seeking direction to the petitioner to pay a sum of Rs.8,500/- per month towards

maintenance to the respondent. The learned Judicial Magistrate-II, Walajah, directed the petitioner to pay a sum of Rs.10,000/- to the respondent towards interim maintenance and to pay Rs.5,000/- to the respondent towards litigation expenses. As against the said order dated 27.02.2019 passed by the learned Judicial Magistrate-II, Walajah in M.C.No.03 of 2017, the Revision petitioner has filed the present Criminal Revision Case before this Court.

4. The learned counsel for the petitioner would submit that the respondent has left the matrimonial home without any valid reason on her own. Therefore, he filed a petition for divorce in M.C.No.1637 of 2015 before the learned Family Court, Bangalore, which was subsequently transferred and renumbered as F.C.O.P.No.250 of 2017 on the file of the learned Additional Family Court, Vellore. During the pendency of the petition for divorce, the respondent has filed a case for maintenance in M.C.No.03 of 2017 under Section 125 Cr.P.C., before the learned Judicial Magistrate-II, Vellore. During the pendency of the said maintenance case, the respondent filed a petition for interim maintenance in I.A.No.668 of 2018 in F.C.O.P.No.250 of 2017 before the Family Court, Vellore under Section 24 of Hindu Marriage Act. The learned Family Court Judge has allowed the application by awarding a sum of Rs.8,500/- per month to the respondent for interim maintenance.

5. In support of his contention, the learned counsel has placed reliance on the judgment of the Hon'ble Apex Court in the matter of Sanjay Kumar Sinha Versus Asha Kumari and another CDJ 2018 SC 376. The Hon'ble Supreme Court held that the order passed by the Family Court under Section 125 Cr.P.C. is pending and the order passed by the Family Court under Section 24 of Hindu Marriage Act stands superseded. Hence, the learned counsel for the petitioner prays to allow this revision case.

6. The learned counsel for the respondent would submit that despite having sufficient means, the petitioner has refused to maintain his wife and son and is duty bound to maintain them. Hence, the learned counsel for the respondent prays to dismiss the Revision case.

7. Heard both sides and perused the materials available on record.

8. Considering the facts and circumstances of the case, it is shock and surprise that the husband has filed a petition for Divorce before the Family Court, Bangalore in M.C.No.1637 of 2015 in the year of 2015, which was subsequently transferred and renumbered as F.C.O.P.No.250 of 2017 now pending before the learned Family Court, Vellore. During the pendency of the above

case, the respondent/wife has filed a petition under Section 125 Cr.P.C., before the learned Judicial Magistrate, Walajah, Vellore District for maintenance, which was taken on file as M.C.No.3 of 2017. During the pendency of the maintenance case, the respondent filed a petition under Section 24 of Hindu Marriage Act in I.A.No.668 of 2018, in which, seeking direction to the petitioner to pay a sum of Rs.8,500/- per month towards maintenance to the respondent. The learned Judicial Magistrate-II, Walajah, directed the petitioner to pay a sum of Rs.10,000/- per month to the respondent and her child towards interim maintenance and also to pay Rs.5,000/- to the respondent towards litigation expenses. It is settled law that if the wife is unable to maintain herself, the husband despite having sufficient means and neglect to maintain her, the wife is entitled to get a maintenance from her husband.

9. In this case, there are two orders passed by the Family Court. One order was passed by the Judicial Magistrate-II, Vellore in M.C.No.03 of 2017 dated 27.02.2019 under Section 125 of Cr.P.C. and another order was passed by the learned Family Court in I.A.No.688 of 2018 in F.C.O.P.No.250 of 2017 dated 26.02.2019 under Section 24 of Hindu Marriage Act. The citation referred by the learned counsel for the petitioner is squarely applicable to the present case on hand.

10. Therefore, the order passed by the learned Judicial Magistrate-II, Vellore under 125 Cr.P.C. in M.C.No.03 of 2017 dated 27.02.2019 is set aside. However, the petitioner has not challenged the order passed by the Family Court, Vellore under Section 24 of Hindu Marriage Act. The learned counsel for the petitioner has admitted that so far, the petitioner has not paid or deposited any maintenance amount to the respondent, even for the order in I.A.No.688 of 2017 in F.C.O.P.No.250 of 2017, dated 26.02.2019. Therefore, the petitioner is directed to pay the entire arrears of maintenance to the respondent on or before 10.05.2019 before the Family Court, Vellore in F.C.O.P.No.250 of 2017.

11. With the above observations and directions, this Criminal Revision Case is disposed of. Consequently, the connected Criminal Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

rli

To

1. The Judicial Magistrate-II, Vellore.

2. The Family court, Vellore.

+1 cc to Mr.S.Vijayanand, Advocate, S.R.No.41590

+2 ccs to Mr.S.Vijayanand, Advocate, S.R.No.41590
(01/05/2019)

CrI.R.C.No.372 of 2019
and

CrI.M.P.No.5493 of 2019

CNR (CO)
SSM(30/04/2019)



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