

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Cr1.R.C.No.1189 of 2018
and
Cr1.M.P.No.13983 of 2018

Vinoth Kumar

... Petitioner

Vs.

R.Abirami

... Respondent

Prayer: Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C., to set aside the order dated 24.08.2018 passed in M.P.No.319 of 2018 in M.C.No.485 of 2017 U/s.125 of Cr.P.C on the file of IV Additional Family Court, Chennai, consequently permitting the Power of Attorney, Mr.S.Lakshmanan, the father, represent the Revision Petitioner in the above M.C.No.485 of 2017 before the learned IV Additional Family Court, Chennai and allow the above Criminal Revision Petition.

For Petitioner : Mr.A.Arumugam
For Respondent : Mr.A.Arulmozhi

O R D E R

The Criminal Revision Case has been filed by the petitioner under Section 397 read with 401 Cr.P.C., to set aside the order dated 24.08.2018 passed in M.P.No.319 of 2018 in M.C.No.485 of 2017 U/s.125 Cr.P.C on the file of IV Additional Family Court, Chennai, consequently permitting the Power of Attorney, Mr.S.Lakshmanan, the father, the represent the Revision Petitioner in the above M.C.No.485 of 2017 before the learned IV Additional Family Court, Chennai and allow the above Criminal Revision Petition.

2.The learned counsel for the Revision Petitioner would submit that the Revision Petitioner is the husband and the respondent is the wife. The Revision Petitioner filed a petition under Section 13(1) (i-a) of Hindu Marriage Act, 1956 before the learned Subordinate Judge, Pattukkottai in H.M.O.P.No.15 of 2017, for divorce. Subsequently, the

H.M.O.P.No.15 of 2017 was transferred to the IV Additional Family Court at Chennai.

3. During the pendency of the said petition, the respondent wife filed a petition under Section 125 of Cr.P.C. in M.C.No.485 of 2017 before the IV Additional Family Court at Chennai for monthly maintenance, in which the revision petitioner /husband filed a petition in M.P.No.319 of 2018 in M.C.No.485 of 2017 for permission to permit the petitioner to represent through his Power Agent S.Lakshmanan, father of the petitioner in the above case. The said petition was dismissed by the IV Additional Family Court, Chennai on 24.08.2018. Challenging the dismissal order, the Revision Petitioner is before this Court.

4. Heard both sides. Perused the records.

5. The learned counsel for the Revision Petitioner would submit that the Revision Petitioner is working in Singapore, therefore, he is not in a position to appear for each and every hearing before the IV Additional Family Court, Chennai. Therefore, the petitioner moved an application before the IV Additional Family Court, Chennai, to permit him to represent the case through his power agent S.Lakshmanan, father of the petitioner. The same was not considered by the learned IV Additional Family Court, Chennai and the same was dismissed.

6. In the light of the above submission, this Court is of the opinion that when the husband filed the Petition for divorce under Hindu Marriage Act, 1956 and the same is pending before the competent Court, during the pendency of H.M.O.P enabling provisions for interim maintenance till the disposal of the main divorce petition in Section 24 of Hindu Marriage Act. Therefore, respondent can invoke Section 24 of Hindu Marriage Act and also subsequently can invoke Section 25 of Hindu Marriage Act for interim maintenance and permanent alimony respectively. Under these circumstances, the scope under Section 125 of Cr.P.C. is limited and summary in nature. Admittedly the case in M.P.No.485 of 2017 filed only after filing the divorce petition and during the pendency of the same.

7. Under these circumstances, when the petition in H.M.O.P.No.15 of 2017 is pending, the specific provision under the Hindu Marriage Act for interim maintenance by invoking Section 24 instead of Section 125 Cr.P.C. is not maintainable. Further the petition filed by the wife in M.C.No.485 of 2017 under Section 125 Cr.P.C. shall be converted under Section 24 of Hindu Marriage Act.

8. Therefore, the IV Additional Family Court, Chennai is hereby directed to convert the petition in M.C.No.485 of 2017 under Section 24 of Hindu Marriage Act and proceed the matter in accordance with law.

9.With the above direction, this Criminal Revision Case is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ebsi/kas

To

1. The IV Additional Principal Judge,
The IV Additional Family Court,
Chennai.

Copy to:

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

+2cc to Mr.A.Arulmozhi, Advocate sr.no.18506
+1cc to Mr.A.Arumugam, Advocate sr.no.18494

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&
Crl.M.P.No.13983 of 2018

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