

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1448 of 2018
and
Crl.M.P.No.16907 of 2018

C.Balamahendra ... Petitioner / Respondent

Vs

V.Chitra Respondent / Petitioner

PRAYER: Criminal Revision case filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records in M.P.No.672 of 2018 in M.C.No.177 of 2018 order dated 25.09.2018 on the file of the V Additional Family Court, Chennai and to set aside the same.

For Petitioner : Mr.G.Prakash Kumar

For Respondent : Mr.M.Sankar

O R D E R

Criminal Revision case has been filed to set aside the order dated 25.09.2018 in M.P.No.672 of 2018 in M.C.No.177 of 2018 on the file of the V Additional Family Court, Chennai.

2. The petitioner is the husband and the respondent is the wife. The marriage between the petitioner and the respondent was performed on 02.03.2017 as per Hindu rites and customs. After the marriage, the petitioner and his parents harassed the respondent by demanding dowry and they have driven her out from the matrimonial home.

3. Thereafter, the petitioner has filed a petition for Divorce before the Family Court in H.M.O.P.No.84 of 2018 in the year of 2017 before the Subordinate Court, Theni, and it was transferred and renumbered as H.M.O.P.No.3141 of 2018 and pending before the Family Court, Chennai.

4. During the pendency of the said petition for divorce, the respondent/wife has filed a petition under Section 125 of Cr.P.C., for maintenance before the V Additional Family Court, Chennai, in M.C.No.177 of 2018. During the pendency of the maintenance case, the respondent filed a petition under Section 24 of Cr.P.C., in M.P.No.672 of 2018, in which, the exparte order was passed by the learned V Additional Family Court Judge, Chennai, by directing the revision petitioner to pay a sum of Rs.1,50,000/- to the respondent towards interim maintenance. As against the said order, the Revision petitioner has filed the present Criminal Revision Case before this Court.

5. The learned counsel for the petitioner would submit that the respondent left the matrimonial home without any valid reason on her own. Therefore, he filed a petition for divorce in H.M.O.P.No.84 of 2018 before the Subordinate Court, Theni, which was subsequently transferred and renumbered as H.M.O.P.No.3141 of 2018 on the file of the learned Additional Family Court, Chennai. During the pendency of the petition for divorce, the respondent has filed a case for maintenance in M.C.No.177 of 2018 under Section 125 Cr.P.C., before the V Additional Family Court, Chennai, pendency of the said maintenance case, the respondent filed a petition for interim maintenance in M.P.No.672 of 2018 before the V Additional Family Court, Chennai under Section 24 of Hindu Marriage Act. The learned V Additional Family Court Judge, Chennai allowed the M.P.No.672 of 2018 by awarded a sum of Rs.1,50,000/- to the respondent for interim maintenance, even without giving opportunity to the parties for filing counter. Hence, the learned counsel for the petitioner prays to allow this revision case.

6. The learned counsel for the respondent would submit that the petitioner herein is running a jewelry shop, pawn brokerage, and finance and also having abundant properties of their own. The respondent is having regular monthly income to the tune of Rs.7,00,000/- and he is also a B.E., graduate and is duty bound to maintain the respondent. 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 in H.M.O.P.No.84 of 2018. Subsequently which was transferred and renumbered as H.M.O.P.3141 of 2018. During the pendency of the petition for divorce, the respondent filed a case separately under Section 125 of Cr.P.C., for maintenance in M.C.No. 177 of 2018 before the V Additional Family Court, Chennai. During the pendency of the said maintenance case the wife seeks interim

maintenance and filed a petition under Section 24 of Hindu Marriage Act, before the learned V Additional Family Court Judge, Chennai, in M.P.No.672 of 2018.

9. Without giving any opportunity to the petitioner for filing his counter, the learned V Additional Family Court, Judge, Chennai allowed the said Miscellaneous petition in M.P.No.672 of 2018 in M.C.No.177 of 2018 and awarded a sum of Rs.1,50,000/- per month to the respondent for interim maintenance till the disposal of the M.C.No.177 of 2018. In this case, the wife filed a case under Section 125 Cr.P.C. Proceeding under Section 125 Cr.P.C. is summary in nature. If the wife 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.

10. Admittedly, after the husband filed a petition for divorce under the Hindu Marriage Act, she invoked Section 125 of Cr.P.C., in which she filed miscellaneous petition in M.P.No.672 of 2018, which is not maintainable one. The husband filed a petition for divorce and during the pendency of the said petition, if wife is unable to maintain, she can file a petition under Section 24 of Hindu Marriage Act for interim maintenance till the disposal of the petition for divorce and thereafter, under Section 25 of the Act for permanent alimony but not under Section 125 of Cr.P.C. During the pendency of the petition for divorce, there is an enabling provision available under Section 24 of the Hindu Marriage Act, the wife cannot invoke Section 125 of Cr.P.C. The learned Family Court judge does not understand the scope of Section 125 of Cr.P.C. for maintenance. Even otherwise the miscellaneous petition filed by the respondent/wife should have been taken on file in petition for divorce in H.M.O.P.No.3141 of 2018 and after giving opportunity to the petitioner/husband, disposed the same in accordance with law but not in the maintenance case filed under Section 125 of Cr.P.C.. The Family Court has failed to do so. Hence the order of the Family court dated 25.09.2018 warrants interference. In short miscellaneous petition under Section 24 of Hindu Marriage Act could be invoked only in the matrimonial proceedings but not in the proceedings under Section 125 of Cr.P.C.

11. Under these circumstances, the order passed by the learned V Additional Family Court Judge, Chennai in M.P.No.672 of 20189 dated 25.09.2018 is set aside and to direct the V Additional Family Court Chennai, to dispose of the case in M.C.No.177 of 2018 in accordance with law.

12. With these observations, this Criminal Revision Case is disposed of. Consequently, the Criminal Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbn

To

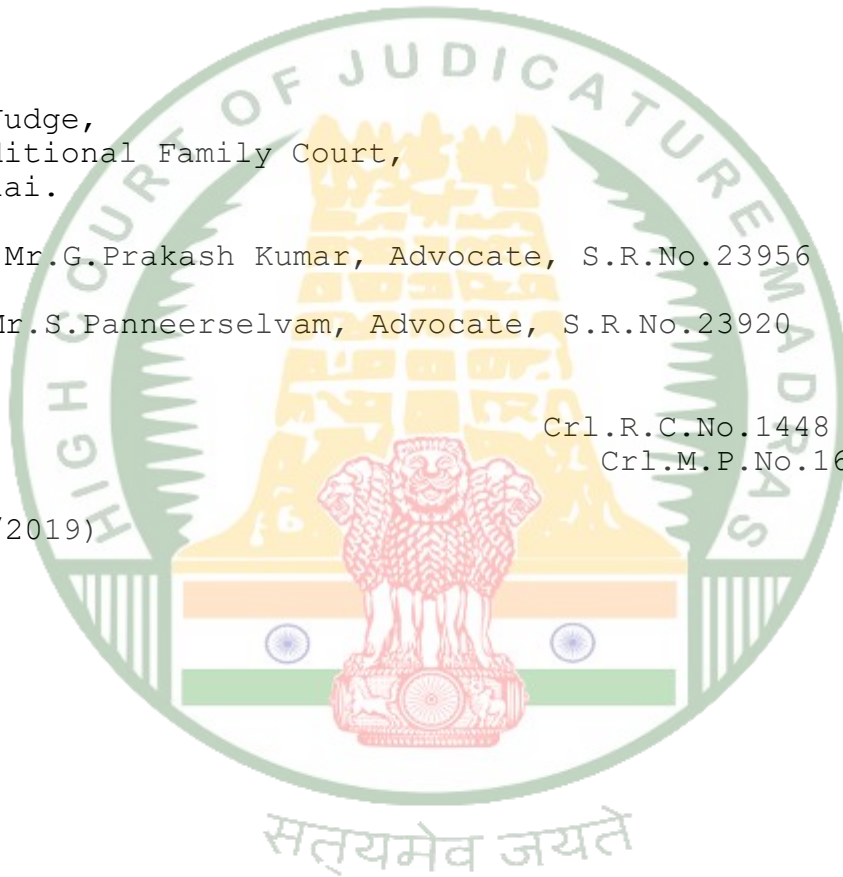
The Judge,
V Additional Family Court,
Chennai.

+3 ccs to Mr.G.Prakash Kumar, Advocate, S.R.No.23956

+1 cc to Mr.S.Panneerselvam, Advocate, S.R.No.23920

Cr1.R.C.No.1448 of 2018 and
Cr1.M.P.No.16907 of 2018

NMI (CO)
SSM(28/05/2019)



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