



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD) .Nos.11887 & 3129 of 2017

and

Crl.M.P. (MD) .Nos.8177, 8178 & 2376 of 2017

Crl.O.P. (MD) .No.11887 of 2017

Girish M.Kataria

...Petitioner/1st Respondent

Vs.

Deepa @ Vasanthi

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to quash the proceedings in D.V.C.No.01 of 2017, pending on the file of the Judicial Magistrate-Additional Mahila Court, Tiruchirappalli, against the petitioner herein.

For Petitioner

: Mr.K.Rajeswaran

for Mr.P.Babu

For Respondent

: Mr.C.Dhanaseelan

Crl.O.P. (MD) .No.3129 of 2017

1. Nanda M.Kataria

2. Neeta Kataria

...Petitioners/Respondents 2 & 3

Vs.

Deepa @ Vasanthi

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to quash the proceedings in D.V.C.No.01 of 2017, pending on the file of the Judicial Magistrate-Additional Mahila Court, Tiruchirappalli, against the petitioners herein.

For Petitioners

: Mr.K.Rajeswaran

for Mr.P.Babu

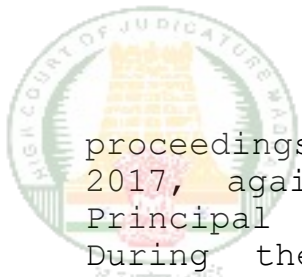
For Respondent

: Mr.C.Dhanaseelan

COMMON ORDER

The present petitions have been filed by the husband, mother-in-law and sister-in-law of the respondent, seeking to quash the proceedings initiated under the Domestic Violence Act.

2. It is seen from the records that the respondent was married to the petitioner in Crl.O.P.(MD).No.11887 of 2017, in the year 1995 and there is also a male child out of the said wedlock. There was a matrimonial dispute, which resulted in divorce



proceedings initiated by the petitioner in Crl.O.P.(MD).No.11887 of 2017, against the respondent before the learned Ist Additional Principal Judge, Family Court, Bangalore in M.C.No.933 of 2000. During the pendency of the petition, the parties reached a settlement. The relevant portions of the settlement reached between the parties is extracted hereunder:-

"1.The petitioner and the respondent submit that their marriage was solemnized on 10.05.1995 at Mumbai. Due to irreconcilable differences and incompatibility of temperaments, the petitioner and the respondent have been living separately since 10 years. The marriage between them has been broken irretrievably. There is absolutely no chance of reunion amongst themselves. Hence the petitioner and the respondent have decided to get the marriage between them dissolved by a decree of divorce.

2.From the wedlock of the parties herein, a male child by name Chirag G.Kataria was born on 04.08.1996. Both the parties agree that Chirag G.Kataria will be in the custody of the respondent.

3.The petitioner has agreed to pay a sum of Rs.15,00,00/- (Rupees Fifteen Lakhs only) towards full and final settlement of permanent alimony of respondent and minor child Chirag G.Kataria. The said amount will be paid before the Hon'ble Court by way of Demand Draft drawn on Union Bank of India in favour of Smt.Deepa G.Kataria @ R,Vasanthi on 24.04.2009. The respondent accepts the said of Rs.15,00,00/- (Rupees Fifteen Lakhs only) towards full and final settlement of permanent alimony of her and her minor child Chirag G.Kataria.

4.The respondent undertakes to withdraw the Execution Petition No.115 of 2007, filed by her. The claim of the said Execution Petition is satisfied by payment of the aforesaid sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only)

5.Both the parties agree that there will be no further claims whatsoever against each other in future.

6.The respondent further agrees not to make any claims whatsoever, both moveable and immovable on behalf of the child in future."

3. Pursuant to the above settlement between the parties, the marriage was dissolved by the decree dated 24.04.2009, in terms of the memorandum of settlement. As per the memorandum of settlement,



the respondent received a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) both towards her maintenance and maintenance of her minor child and she was taking care of her minor child and was providing with the education.

WEB COPY 4. Nearly after seven years, the respondent proceeded to file a petition under the Domestic Violence Act against all the petitioners, seeking for the relief under Sections 18, 19 and 20 of the Protection of Women from Domestic Violence Act, 2005. The relief that has been claimed in the petition is extracted hereunder:-

"18.For the reason stated above, it is therefore prayed that the Hon'ble Court may be pleased to therein:-

(i) residence by fixing house accommodation or the alternative fee Rs.25,000/- towards the monthly rent for rented quarters.

(ii) Direct the first respondent to pay Rs.10,000/- per month for the medical expenses for the complainant.

(iii) Direct the first respondent to pay Rs.1,00,000/- per month towards maintenance of the complainant.

(iv) Direct the respondents to pay jointly the Sum of Rs.50,00,000/- towards the compensation for practicing both physical and mental cruelty for the complainant.

(v) Direct the respondent to pay the cost of proceeding."

5. The allegations that have been made in the petition are to the effect that the compromise was forced upon the respondent and it is vitiated on account of compulsion and undue influence and the compromise itself is opposed to public policy. That apart, it has been averred that the respondent is not keeping well and she needs to take care of her medical expenses. That apart, the educational expenses of the son must also be met and she is unable to meet the medication expenses. Certain other allegations regarding to the offences that took place before the Divorce decree has also been stated in the petition.

6. The learned counsel appearing for the petitioners submitted that the petition is an abuse of process of Court and the same is not maintainable. The learned counsel further submitted that the petition filed by the respondent does not satisfy the



minimum requirements of domestic relationship as well as the definition of domestic violence, which is *sine qua non* for maintaining the petition under the Domestic Violence Act. He further submitted that the settlement agreement itself specifically provided that a permanent alimony of Rs.15,00,000/- is paid both for the respondent as well as the minor son and that no further future claims will be made. The learned counsel further submitted that the respondent has already filed an indigent petition before the Family Court, Tiruchirappalli, seeking for an enhancement of maintenance to the tune of Rs.75,00,000/- and the said petition is pending. Therefore, the learned counsel concluded his arguments by submitting that the petition filed by the respondent is not maintainable and the same requires interference of this Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure.

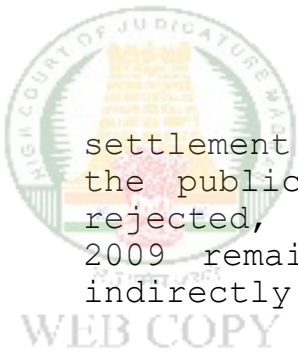
7. Per contra, the learned counsel appearing on behalf of the respondent submitted that the permanent alimony that is said to have been received pursuant to the settlement agreement, is not a bar for maintaining a petition under the Domestic Violence Act. Since according to the petitioner, the maintenance that was received in the year 2009, is not enough to meet educational expenses of the son. That apart, the respondent must also meet her medical expenses. The enactment itself has been brought to meet such contingencies in the interest of woman, who are facing economic abuse by virtue of their dependance for money from their husband in order to maintain herself and the child. The learned counsel in order to substantiate his arguments relied upon the following judgments:-

- **1978 CrI. L. J. 469**
- **1986 1 GLR 272; 1985 0 Supreme (Guj) 149**
- **2014 4 LawHerald 3003; 2017 0 Supreme (P & H) 2086**

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. It is an admitted fact that the marital relationship between the parties has come to an end in the year 2009, by virtue of the dissolution of marriage, pursuant to the memorandum of settlement reached between the parties. It is clear from the settlement that a sum of Rs.15,00,000/- was received towards the full and final settlement for the permanent alimony of both the respondent as well as the minor child. The settlement agreement further provides that no further claims will be made both by the respondent as well as the child in future. The decree of the divorce was passed by recording this memorandum of settlement.

10. The present petition under the Domestic Violence Act has been initiated nearly after seven years. An attempt is being made by making averments in the petition to the effect that the



settlement itself was forced upon the respondent and it is against the public policy. These averments require to be straight away rejected, since the decree of divorce that was passed in the year 2009 remains un-challenged and the same cannot be a questioned indirectly in these proceedings.

11. Further averments that has been made in the petition is that the respondent is not able to meet her medical expenses and educational expenses of her son. For this purpose, the respondent makes various allegations in the petition and she has gone to the extent of adding the mother-in-law and sister-in-law as respondents in the petition. This itself shows the mind of the respondent. It is not known as to how the mother-in-law and sister-in-law are necessary parties to decide the payment of enhanced maintenance to the respondent. By adding the mother-in-law and sister-in-law as parties in the Domestic Violence Petition, it is clear that the proceedings insofar as they are concerned, is clearly an abuse of process of Court and the petition itself is not maintainable, insofar as the mother-in-law and sister-in-law are concerned. The allegations made against them and the attempt made to question the earlier decree passed by the competent Court can never be entertained and the proceedings insofar they are concerned has to be necessarily interfered with.

12. The next question is with regard to the maintainability of the petition against the husband. The learned counsel for the respondent submitted that the permanent alimony that was received in the year 2009 cannot be a bar for maintaining the petition against the husband. It will be relevant to take note of the judgments cited by the learned counsel appearing for the respondent in this regard.

13. The first judgment is the case of **Linga Gounder Vs. V.Raman** reported in **1978 CrI. L. J. 469** and the relevant portions of the judgment is extracted hereunder:-

"11. The third of the cases cited is that of Krishnammal V. Mahadeva Iyer, 1973-1 Mad LJ 344, where Maharajan. J. has observed as follows-

"Once a competent Civil Court gives a decision upon the liability for maintenance or the quantum thereof, the criminal Court is statutorily bound Under Section 489, Clause (2), Cr.P.C., _to cancel or vary its own order in accordance with the decision of the Civil Court."

Mr. Shanmugham, contends that in the light of this observation, the Magistrate should have taken note of the Civil Court granting maintenance at the



rate of Rs.50 per month and therefore, should have confined his order also to the grant of a similar maintenance. The contention is clearly fallacious. The manner in which Section 489 (2) in the Criminal Procedure Code of 1898 was framed and Sub-section (2) of Section 127 of the 1973 Code is worded, will clearly show that for the Civil Court's pronouncement to have an impact on the order of maintenance made by a Magistrate, it should have been later in point of time. There is nothing in Section 127 (2) to show that if there had been an earlier decree by a Civil Court, a Magistrate must confine his award only to the quantum fixed by the Civil Court. If such a construction is to be put, it would, undoubtedly, result in hardship to destitute wives, children and parents. A Civil Court's decree might have been passed several years ago and it will be hardly fair to the claimants to say that in spite of the passage of several years and the increase in the cost of living, the Criminal Court should confine its award only to the figure fixed by the Civil Court and not give a higher maintenance after taking into consideration relevant features such as the rise in prices or the growing needs of the wife, children etc. Of course, if the Civil Court's decree was quite proximate in point of time, the Magistrate may take note of the decree passed by the Civil Court in fixing the quantum of maintenance. As pointed out by Sadasivam, J. in *Govindasami Mudaliar v. Muthulakshmiammal*, 1966 Cri LJ 732 (Mad), the question as to how far a decree of Civil Court can have an impact on proceedings for maintenance under the Criminal Procedure Code will depend, on the facts and circumstances of each case. In the instant case, the civil suit was filed in the year 1967 and the suit was decreed in 1970. The proceedings before the Magistrate were started only in the year 1975. Therefore, five years and more had passed between the date of the Civil Court's decree and the taking on file of the petition Under Section 125, Cr.P.C.. In the meanwhile, the respondent had grown up and had also been admitted into school. Hence the Magistrate is justified in fixing a higher rate of maintenance than what was granted by the Civil Court. Mr. Shanmugham contends that at the time the Magistrate entertained the petition the second appeal was pending and subsequently, the second appeal also resulted in the confirmation of the trial Court's decree for maintenance at the rate of Rs. 50 per



month, and hence, taking note of the judgment in that second appeal, the Magistrate should have fixed the maintenance amount only at Rs. 50 per month and not Rs. 75. This argument overlooks the fact that the judgment in the second appeal was with reference to fixation of maintenance amount by the trial Court in the year 1970. The question as to how much maintenance the respondent would require in the year 1975 or 1976, was not the subject-matter of consideration in the second appeal. Therefore, none of the points raised by the petitioner, or the cases cited by him, can be countenanced and a finding given in favour of the petitioner that the Magistrate was not entitled to fix a higher rate of maintenance than what was fixed by the Civil Court in the year 1970."

14. The next judgment that has been relied upon by the learned counsel appearing for the respondent is the case of **Bai Laxmiben D/o. Ramabhai Hirabhai Vs. Bharatbhai Vechatbhai Patel** reported in **1986 1 GLR 272; 1985 0 Supreme (Guj) 149**. The relevant portions of the judgment is extracted hereunder:-

"6. In respect of the rights of the Muslim women, the Supreme Court has made the legal position clear in the case of *Bai Tahira v. Ali Hussain Fissalli*, reported in AIR 1979 SC 362 and in the case of *Mohd. Ahmed Khan v. Shah Bano Begum*, reported in AIR 1985 SC 945. In *Bai Tahira's* case (supra), the Supreme Court has stated that the payment of illusory amounts by way of customary or personal law requirement will be considered in the reduction of maintenance rate, but cannot annihilate that rate unless it is a reasonable substitute. The purpose of the payment under any customary or personal law must be to obviate destitution of the divorcee and to provide her with wherewithal to maintain herself. There must be a rational relation between the sum so paid and its potential as provision for maintenance. In the latter case, i.e. in *Mohd. Ahmed Khan's* case (supra), the Supreme Court has clarified the meaning of the term "Mehr" with which we are not concerned.

7. The principle underlying the lump sum payment as laid down by the Supreme Court in *Bai Tahira's* case (supra) can be equally applied to the facts and circumstances of this case. The basic principle is that the object of the lump sum payment to be made is to obviate the distillation of the divorcee and to provide her with the wherewithal to maintain herself. As laid down by the Supreme Court, there



must be a rational relation between the sum so paid and its potential as provision of maintenance. In the instant case the petitioner-wife was forced to go to Court for claiming her maintenance. Under the circumstances, then prevailing she gave up her right to claim future maintenance "voluntarily" for lump sum amount and executed the deed of divorce. Now, when she has preferred an application for maintenance, it cannot be said that the application at the instance of the petitioner-wife claiming maintenance is not maintainable because she had surrendered her future right of maintenance. Whenever in application for maintenance it is contended that because lump sum amount is paid towards the claim of future maintenance and therefore the application is not maintainable, it would be the bounden duty of the Court to examine whether the lump sum amount of maintenance mentioned in the deed of divorce or claimed to have been paid otherwise, had any rational connection with the necessities of life to be provided for in future and was it not an illusory amount or was it sufficient amount to maintain herself for the entire life?

8. This principle has its roots in the public policy and the provisions of law. Underlying public policy, behind the provisions of law regarding maintenance is that one who is destitute should be provided maintenance by the person whose duty it is to maintain such person. This public policy cannot be circumvented and the object of law cannot be frustrated by making a payment of illusory amount of maintenance. As far as the surrender of future right to maintenance is concerned, answer is very simple. Agreement to surrender such right of future maintenance for illusory amount of maintenance would be unfair and unconscionable. Such agreement is entered into between two unequals. One (i.e. wife, child or parents, as the case may be is destitute and helpless and another (i.e. husband, father or son as the case may be) relatively stronger and better placed in the society. Ordinarily this will be the position, though exception cannot be ruled out completely. In this background, if the amount determined for future maintenance is illusory, the agreement to surrender the right to maintenance also would be unlawful as it would be against the public policy and also unconscionable and unfair. Both the courts below have failed to examine the question from this angle. Thus, both the Courts below have failed to exercise the jurisdiction vested in them and have completely misdirected themselves. This has resulted into miscarriage of justice and hence it is necessary to exercise powers under Article 227 of the Constitution."



15. The third judgment that has been relied upon by the learned counsel appearing for the respondent is the case of **Satbir Singh Vs. Jasvir Kaur** reported in **2014 4 LawHerald 3003; 2017 0 Supreme (P & H) 2086** and the relevant portions of the judgment is extracted hereunder:-

"5.We have heard the learned counsel for the appellant, at length, and we are of the opinion the the relief which has been granted to the respondent-wife vide impugned order is only under Section 25 of the Hindu Marriage Act. So far as the observation in Para 39 of the judgment to the effect that a sum of Rs.7 Lac in lump sum would be in addition to maintenance already granted to the respondent-wife under Section 125 Cr.P.c. is concerned, we do not find any infirmity in the same as the amount determined in proceedings under Section 125 Cr.P.C. is independent of the amount determined as permanent alimony for the wife under Section 25 of the Hindu Marriage Act. As the amount determined by the Magistrate in proceedings under Section 125 Cr.P.C. is the subject matter of the revision petition / appeal pending before the Sessions Court, it will modify, reduce or affirm the quantum determined by the Magistrate under Section 125 Cr.P.C. The award of lump sum alimony in proceedings under Section 25 of the Hindu Marriage Act, is not an absolute bar for claiming maintenance under Section 125 Cr.P.C. However, it is always open to a Court holding proceedings under Section 125 Cr.P.C. to consider the circumstances of wife having received permanent alimony as one of the circumstance to determine the quantum of maintenance in proceedings under Section 125 Cr.P.C. It is observed that any observation made in the impugned order will not affect the adjudication of the revision petition / appeal pending before the Sessions Court against the quantum of maintenance determined by the Magistrate under Section 125 Cr.P.C. The scope of interference in the permanent alimony determined under Section 25 of the Hindu Marriage Act is limited and meagre. Even otherwise on going through the impugned order we do not find any patent illegality pertaining to jurisdiction or determination of the quantum by applying the



WEB COPY

requisite parameters. The only relief which can be granted to the appellant is that it will be open to the Executing Court to fix the installments for payment of permanent alimony subject to his depositing minimum amount of Rs.3 Lac at the time of seeking payment by way of installments before the Executing Court."

16. The judgments that have been referred by the learned counsel appearing for the respondent pertain to a claim made under Section 125 of the Code of Criminal Procedure, after the permanent alimony was paid in lump sum at the time of divorce. The Courts have held that such a petition is maintainable and it is not an absolute bar for claiming interim maintenance under Section 125 of the Code of Criminal Procedure. The learned counsel appearing for the respondent wants to draw inference from these judgments and apply the same to the present proceedings that has been initiated by the respondent under the Domestic Violence Act.

17. The domestic violence has been defined under Section 3 of the Protection of Women from Domestic Violence Act, 2005. Unless the respondent / wife satisfies the requirements of this provision, the petition itself becomes not maintainable. Going by the submissions made by the learned counsel appearing for the respondent and the averments made in the petition, this Court has to take into consideration whether the allegations made in the petition will come within the purview of the term 'economic abuse'. It will be relevant to extract Section 3 Clause IV (a) of the Protection of Women from Domestic Violence Act, 2005, which deals with economic abuse.

"(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;"

18. A reading of the term 'economic abuse' that has been extracted supra shows that it will include deprivation of all or any economic or financial resources to which the aggrieved person as defined under Section 2 (a) of the Act will be entitled under any law or custom and which is required by the aggrieved person out of necessity.



19. It is the allegation made in the petition to the effect that the respondent requires payment of maintainance for meeting her medical expenses and also the educational expenses of the son. It is true that the respondent has sought for the payment of maintainance under four heads in the relief portion at paragraph No.18 of the petition. However, this Court wants to confine the relief only insofar as the medical expenses and the educational expenses. The respondent has averred that she is not having independent means or income to maintain herself and she is totally depending upon her aged parents to meet the expenses including that of the educational expenses of the minor son.

20. The definition of an aggrieved person under Section 2 (a) of the Protection of Women from Domestic Violence Act, 2005, means any woman who is, or has been, in a domestic relationship and alleges to have been subject to any act of domestic violence by the husband and his relatives. The purport of the arguments made by the learned counsel appearing for the respondent revolves around mainly the educational expenses of the minor son to be met by the respondent. The definition of economic abuse which was extracted supra also talks about the necessities of not only the aggrieved person but also that of her children. Therefore, if the wife is not in a position to meet the educational expenses of the son, she can claim the same from the father, even though the marriage has been dissolved. In other words, even the past domestic relationship can be a ground to claim for maintenance to meet necessities insofar as the children are concerned. If such a broad meaning is not assigned to the word 'economic abuse', the same will defeat the very purpose of the enactment. It is true that the husband need not have to pay anything more than what has already been paid by him towards permanent alimony. However, taking cue from the judgments that have been cited by the learned counsel appearing for the respondent, it is seen that the permanent alimony by itself will not be a complete bar from claiming future maintenance and such restricted construction will result in hardship to the destitute wife and also child.

21. In view of the above findings, this Court is of the considered view that the Domestic Violence Petition that has been filed by the respondent as against the husband can be maintained for the relief of deciding the educational expenses that has to be provided to the minor son by the father viz., the petitioner in Crl.O.P.(MD).No.11887 of 2017 and the matter has to be decided by the Court below. This will of course confine itself only to the educational expenses till the boy became a major. The maintenance that has been sought for by the respondent for herself under the various heads is not maintainable. More particularly, due to the fact that she had already initiated the proceedings for enhancement of maintenance before the Family Court, Trichirappalli.



22. In the result, the proceedings in D.V.C.No.1 of 2017, before the Court below, is quashed insofar as the mother-in-law and sister-in-law are concerned. Insofar as the husband is concerned, the Court below is directed to decide only with regard to the educational expenses incurred by the respondent towards her son, till he became a major and the same can be directed to be paid by the father, who is the petitioner in Crl.O.P.(MD).No.11887 of 2017. To that limited extent, the petition filed by the respondent before the Court below is maintainable.

23. Accordingly Crl.O.P.(MD).No.3129 of 2017 is hereby allowed and Crl.O.P.(MD).No.11887 of 2017 is disposed of with a direction to the learned Judicial Magistrate, Additional Mahila Court, Tiruchirappalli, to confine the proceedings only for determining the educational expenses payable by the petitioner till the son became a major and direct the petitioner to make that payment in the name of his son directly. The proceedings shall be completed within a period of three months from the date of receipt of a copy of this order.

24. The presence of the petitioner is dispensed with and he shall be represented by a counsel before the Court below and he shall be present as and when required during important dates of hearings. It is made clear that the findings given in this petition will not have any bearing in the independent proceedings initiated by the respondent before the Family Court, Tiruchirappalli, seeking for enhancement of maintenance. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

tsg

To

1. The Judicial Magistrate-
Additional Mahila Court, Tiruchirappalli.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC TO MR.K.RAJESHWARAN, Advocate Sr. No.94809

+2CC TO MR.C.DHANASEELAN, Advocate Sr. No. 94406

Common Order made in
Crl.O.P. (MD) .Nos.11887 & 3129 of 2017
24.10.2019

NA (CO)

<https://hccs4.ecourts.gov.in/hccs4services> 6C