



C.R.P. (PD) No.1088 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Civil Revision Petition (PD) No.1088 of 2021

R.Usha

.. Petitioner

Vs.

S.Umapathy

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 17.07.2018 passed by the learned Principal Sub Judge, Vellore in I.A.No.43 of 2016 in HMOP No.67 of 2016.

For Petitioner : Mr. D.Thirumoorthy
for M/s.S.P.Arthi

For Respondent : Mrs. Deepika B.Revanth



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ORDER

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2. The original proceeding in HMOP No.67 of 2016 has been initiated by the husband seeking divorce on the ground of cruelty. The wife filed an application under Section 24 of the Hindu Marriage Act, seeking maintenance at Rs.10,000/- for herself, Rs.10,000/- for her minor son and Rs.10,000/- as litigation expenses.

3. This application was resisted by the husband contending that the Judicial magistrate in MC No.6 of 2011 had granted a sum of Rs.1,500/- to the petitioner and a sum of Rs.2,000/- to the child. It was also contended that an Appeal against the said order, the same was modified granting Rs.1,500/- each to the wife and the child. The learned Subordinate Judge, Vellore, who heard the application, dismissed the application, concluding



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that once the Judicial Magistrate has granted maintenance, the wife cannot invoke Section 24 and seek interim maintenance.

4. Mr.D.Thirumurthy, learned counsel appearing for the petitioner would contend that a grant of maintenance under Section 125 cannot bar the wife from filing an application under Section 24 of the Hindu Marriage Act. He would rely upon the judgment of this Court in **Deepa V. Balaji**, reported in **2017 SCC Online Mad 20701**, wherein this Court had held as follows:

“24. An order passed under Section 125 Cr.P.C. will not take away the jurisdiction of the Matrimonial Courts/Civil Courts to grant pendent lite maintenance to the wife and children under Sections 24, 26 of the Hindu Marriage Act. An order of maintenance passed under Section 125 Cr.P.C shall not bar the wife and the children to recourse to Sections 24, 26 of the said Act and seek maintenance in a pending matrimonial proceedings. They can seek such a relief in a



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matrimonial proceedings initiated either by the husband or by the wife herself.”

In view of the above categorical pronouncement of this Court, I do not think that the order of the learned Subordinate Judge dismissing the application could be sustained. The Revision therefore succeeds and the order of the learned Subordinate Judge is set aside. The application in IA No.43 of 2016 is restored to file and the same is remitted to the Trial Court.

5. The learned Subordinate Judge will consider the application on its merits and decide on the maintenance after taking into account the maintenance awarded by the Judicial Magistrate under Section 125 Cr.P.C. The learned Subordinate Judge is required to dispose of the application within a period of four months from the date of receipt of a copy of this order. The parties are required to file their respective affidavits of assets and liabilities, as directed by the Hon'ble Supreme Court in ***Rajnish v. Neha and another***, reported in ***(2021) 2 SCC 324***.

jv

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Index: No

Internet: Yes

Speaking order/Non Speaking order

To

1. The Principal Sub Judge,
Vellore.
2. The Section Officer,
V.R.Section,
High Court of Madras.



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R.SUBRAMANIAN, J.

jv

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