



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2021

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THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.754 of 2021
in Crl.MP.11517 of 2021

Pazhaniappan @ Manickam ... Petitioner/Respondent

Vs.

1.Karuppannan

2.Marayee Respondents/Petitioner

PRAYER: Criminal Revision is filed under Sections 397 & 401 of Criminal Procedure Code to set aside the order passed in Crl.MP.No.103 of 2021 dated 08.09.2021 on the file of the Family Court, Namakkal.

For Petitioner : Mr.W.Camyles Gandhi.

ORDER

This revision has been filed seeking to set aside the order passed by the District Judge/Family Court, Namakkal dismissing the petition filed by the petitioner under Section 126(1)(a) of Cr.PC.

2. The brief facts of the case :-

The respondents are the parents of the petitioner, they have filed MC.No.12 of 2019 against the petitioner who is their only son claiming maintenance from him. When the case was posted for arguments, the petitioner had filed Crl.MP.No.103 of 2021 under Section 126(1)(a) of Cr.PC contending that the Court did not have territorial jurisdiction to try the case.

3. The Family Court/Trial Court finding that the case was filed during the year 2019 and that the trial had been completed and posted for arguments and further finding that the petition was filed only to delay the trial had dismissed the petition, against which the present revision has been filed.



4. The learned counsel for the petitioner would submit that the petitioner is the only son of the respondents. The petitioner is a resident of R.Pudhupatti, Avvaiyar Garden, Rasipuram Taluk within the territorial jurisdiction of Judicial Magistrate, Rasipuram and as per Section 126(1)(a) of Cr.PC when the parents claim maintenance, they have to initiate proceedings in the Court within whose jurisdiction the person from whom the maintenance is sought lives or "is", whereas the respondents have filed petition before the Family Court, Namakkal which has no territorial jurisdiction to take the petition on file and try the case.

5. He would further submit that the trial Court without taking into consideration that it is only a petition filed by the parents against their son claiming maintenance and not by wife or children had erred in dismissing the petition. In support of his contention, the learned counsel for the petitioner would rely on the judgment of the Hon'ble Apex Court in Vijay Kumar Prasad v. State of Bihar and others reported in (2004) 5 SCC 196.

6. Heard the counsel and perused the materials available on record.

7. Admittedly, MC.No.12 of 2019 had been filed by the respondents who are the parents of the petitioner. The maintenance petition had been filed on the file of the Family Court, Namakkal. No doubt, in the case of Vijay Kumar Prasad (cited supra) the Hon'ble Apex Court has held that the benefit given to the wife and the children to initiate proceedings at the place where they reside is not given to the parents. It is apposite to refer to the relevant paragraphs :-

"13. It is to be noted that clauses (b) and (c) of sub-section (1) of Section 126 relate to the wife and the children under Section 125 of the Code. The benefit given to the wife and the children to initiate proceeding at the place where they reside is not given to the parents. A bare reading of the section makes it clear that the parents cannot be placed on the same pedestal as that of the wife or the children for the purpose of Section 126 of the Code.

14. The basic distinction between Section 488 of the old Code and Section 126 of the Code is that Section 126 has essentially enlarged the venue of proceedings for maintenance so as to move the place



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where the wife may be residing on the date of application. The change was thought necessary because of certain observations by the Law Commission, taking note of the fact that often deserted wives are compelled to live with their relatives far away from the place where the husband and wife last resided together. As noted by this Court in several cases, proceedings under Section 125 of the Code are of civil nature. Unlike clauses (b) and (c) of Section 126(1) an application by the father or the mother claiming maintenance has to be filed where the person from whom maintenance is claimed lives. "

8. However, in the present case, the maintenance petition has been filed before the Family Court, Namakkal. The issue regarding territorial jurisdiction in respect of maintenance case filed by parents before the Family Court of the concerned District is no more resintegra. The Hon'ble Apex Court in a later decision in *Dawalsab v. Khajasab* reported in (2009) 14 SCC 660, taking note of and referring to Vijay Kumar Prasad's case (*supra*) has held hereunder :-

"10. The only question which we are called upon to consider is whether the learned Family Judge as also the High Court were correct in determining the question of jurisdiction on the basis of the expression used in Section 126(1)(a) CrPC without taking into consideration the provisions of Sections 7 and 8 of the Family Courts Act, 1984, or the opening words of Section 126(1) CrPC.

11. The wordings have been interpreted by the High Court and the Family Court to mean that the petition ought to have been filed in Syndagi where the respondent (son of the appellant) was working. Both the learned Family Court Judge and the High Court appear to have missed the fact that an application under Section 125 CrPC has to be taken against any person in any district where the person is. In the instant case, Syndagi also falls within Bijapur District. Accordingly, under Section 126(1)(a) CrPC, the jurisdiction for filing any proceeding under Section 125 would be in Bijapur itself where the Family Court for the district is situated and since Syndagi is within the said district.

12. Furthermore, as far as the jurisdiction of



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the Family Court with regard to civil matters is concerned, the same is set out in Section 7(1) of the Family Courts Act, 1984. Sub-section (2) of Section 7 provides for the jurisdiction of the Family Courts with regard to relevant criminal matters and reads as follows:

"7. Jurisdiction.-(1)***

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-

(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment."

13. Section 8(b) of the above Act which is also relevant to the facts of this case is also extracted hereinbelow:

"8. Exclusion of jurisdiction and pending proceedings.-Where a Family Court has been established for any area,-

(a)***

(b) no Magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);"

14. In the instant case, it is the Family Court therefore, which has jurisdiction to entertain the petition filed by the appellant. The petition had been rightly filed before the Family Court at Bijapur, which is situated in Bijapur, since under Section 8(b) of the Act the Magistrate's jurisdiction under Chapter IX CrPC has been excluded.

15. Reading the opening words of Section 126(1) CrPC with Section 7(2)(a) of the Family Courts Act, 1984, it is quite clear that it was the Family Court at Bijapur which had the jurisdiction to entertain the petition filed by the appellant under Section 125 CrPC. The decision cited on behalf of the respondent did not have occasion to consider these aspects of the matter which are peculiar to the facts of this case"



9. As stated above, the petitioner is a resident of R.Pudhupatti, Avvaiyar Garden, Rasipuram Taluk, Namakkal District, the petition is pending on the file of the District Judge/Family Court, Namakkal. The Family Court, Namakkal has territorial jurisdiction over the place where the petitioner resides. The trial Court though had dismissed the petition on the ground of delay, there is no infirmity in the order.

10. The revision lacks merits and stands dismissed. The Family Court, Namakkal is directed to complete the trial in MC.No.12 of 2019 on merits and in accordance with law, as expeditiously as possible. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar

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To
The District Judge,
The Family Court, Namakkal.

+1cc to Mr.W.Camylen Gandhi, Advocate SR.No.58573

Cr1.RC.No.754 of 2021.

PMK (CO)
CB(01/12/2021)