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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2021

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

CrI.O.P.No.33085 of 2019

Rabecca ... Petitioner/Respondent

Vs.

Samanes Mary ... Respondent/Complainant

PRAYER: Criminal Original petition has been filed under Section 482 of Cr.P.C, call for the records and quash the proceedings in MC. No.2 of 2019 on the file of the District Munsif cum Judicial Magistrate Court, Neyveli.

For Petitioner : Mr. C.Karthik

For Respondent : Mr. M.P.Yuvaraj

ORDER

This petition has been filed against the order in MC. No.2 of 2019 on the file of the District Munsif cum Judicial Magistrate Court, Neyveli and quash the same.

2. The case of the petitioner is that the petitioner and the respondent are sisters. The respondent, who is a differently-abled person, filed a maintenance case before the learned District Munsif cum Judicial Magistrate, Neyveli against the petitioner under Section 125 Cr.P.C. in MC.No.2 of 2019 and the same is pending. For Quashment of the said proceeding, the present petition has been filed before this Court.

3. The learned counsel for the petitioner submitted that there are four sisters born along with the respondent. But the respondent filed a maintenance case only against the petitioner, which is not fair. Even the respondent cannot be file a maintenance petition under Section 125 Cr.P.C. The maintenance petition can be filed only by the wife, legitimate or illegitimate minor children and the parents. Except the above said category, no other can file a case under section 125 of Cr.P.C and therefore, the same is not maintainable.



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4. The learned counsel for the respondent submitted that the defacto complainant is blind and she is struggling with her day to day activities. The respondent has no means and therefore, she is unable to maintain herself. Hence, she has filed a maintenance case against her sister.

5. Heard the learned counsel for both sides and perused the materials available on record.

6. It is admitted that the respondent is a differently-abled person and she filed a maintenance case against her sister. The moot point that requires determination in this case is whether the petitioner is liable to pay maintenance amount under Section 125 Cr.P.C. to the respondent. For better appreciation, Section 125 of Cr.P.C. is quoted hereunder :-

'125. Order for maintenance of wives, children and parents.

(1) If any person leaving sufficient means neglects or refuses to maintain-

(a) His wife, unable to maintain herself, or

(b) His legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) His legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) His father or mother, unable to maintain himself or herself, A Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.



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Explanation. For the purposes of this Chapter.

a) Minor means a person who, under the provisions of the Indian Majority Act, 1975 (9 of 1875) is deemed not to have attained his majority;

(b) "Wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.''

From the above said provision makes it clear that the dependent viz., the wife, legitimate or illegitimate children and the parents are only entitled to claim the maintenance amount. On perusal of the affidavit, it is seen that the petitioner and the respondent are sisters. The respondent filed a maintenance case against her one of the sister under Section 125 of Cr.P.C. and the same is not maintainable.

7. In the result, the Criminal Original petition is allowed.

Sd/-
Asst. Registrar

//True Copy//

Sub Asst. Registrar

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To

1.The District Munsif cum Judicial
Magistrate Court,
Neyveli.

2. The Public Prosecutor,
High Court, Madras

+2 C.C.to MR.C.KARHTIK, ADVOCATE, SR.NO.48189/2021

Cr1.O.P.No. 33085 of 2019

GJ(CO)
RA 20/10/2021