



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.02.2021

Pronounced on : 17.02.2021

CORAM

THE HONOURABLE MR. JUSTICE K. MURALI SHANKAR

CRL.RC(MD).No. 701 of 2017

WEB COPY

Mohamed Nisha Banu : Petitioner / Petitioner

Vs.

1. Mohamed Rafi

2. Sainaba

3. Abadul Salim

4. Syed Iqbal

: Respondents / respondents

PRAYER:- Criminal Revision Case filed under Section 397 and 401 Cr.P.C., against the order of the learned Judicial Magistrate, Additional Mahila Court, Madurai in M.C.No. 254 of 2014, dated 11.07.2017.

For petitioner : Mr. S.M. Jinnah

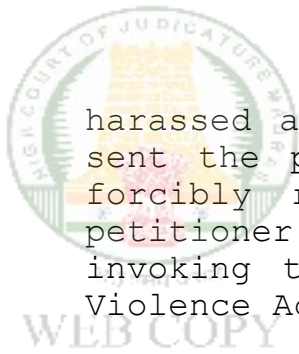
For Respondents : No appearance

ORDER

This Criminal Revision is directed against the order passed in M.C.No. 254 of 2014, dated 11.07.2017 on the file of the Additional Mahila Court, Madurai.

2. The facts not in dispute are that the second respondent is the mother and the respondents 3 and 4 are the brothers of the first respondent, that the first respondent had married the petitioner on 02.06.2001, that due to their wedlock they had two daughters viz., Mofina and Asina and a son Mustafa and that subsequently, there arose misunderstanding between them and are living separately. It is also not in dispute that the petitioner has filed a maintenance case in M.C.No.36 of 2011 on the file of the Additional Chief Judicial Magistrate, Madurai and after enquiry, the Magistrate has passed an order directing the first respondent to pay monthly maintenance at Rs.5,000/- per month to the petitioner and her minor children.

3. The petitioner's case is that in order to avoid payment of maintenance, the respondents had conspired and taken the petitioner and her children to Chennai so as to resume their cohabitation, that the petitioner had lived with the first respondent for two months and during that period also he had

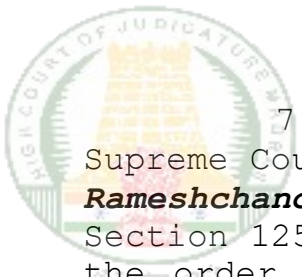


harassed and tortured her physically and mentally, that they had sent the petitioner out of the matrimonial home on 12.03.2014 by forcibly retaining the minor children and that therefore, the petitioner was constrained to initiate the present proceedings invoking the provisions of the Protection of Women From Domestic Violence Act, 2005.

4. It is evident from the records that though the respondents entered into appearance before the Additional Mahila Court and filed their counter statement, they have not chosen to participate in the proceedings and hence, they were set ex parte and that after perusing the evidence adduced by the petitioner and on hearing the petitioner's side, the trial Court has passed the impugned order dated 11.07.2017 by holding that the first respondent alone had committed the domestic violence against the petitioner and directing him to pay the maintenance of Rs.5,000/- per month to the petitioner and dismissed the application as against the respondents 2 to 4. Not satisfied with the quantum of maintenance amount awarded and also the order of the trial Court directing the first respondent to pay maintenance from the date of order, the petitioner / wife has come forward with the present revision.

5. The petitioner herself in her petition has specifically stated that the first respondent is getting a salary of Rs.30,000/- per month. The petitioner as PW.1 in her chief examination affidavit would also reiterate the same contention that the first respondent is doing sales and service in Computers and is getting monthly salary of Rs.30,000/-. More over, the petitioner has admitted in her petition as well as in her evidence that the first respondent after sending the petitioner out of matrimonial home, had forcibly retained their minor children. Even according to the petitioner, minor children are now with the first respondent. Considering the fact that three minor children are in the custody of the first respondent, the fixation of the monthly maintenance at Rs.5,000/- to the petitioner by the trial Court cannot be found fault with. The petitioner has neither shown any material nor produced any additional evidence to substantiate that the maintenance amount is required to be enhanced.

6. As rightly contended by the learned counsel for the petitioner, the learned Magistrate has passed the impugned order directing the first respondent to pay the maintenance amount from the date of order. No doubt, Section 12 of the Protection of Women from Domestic Violence Act, 2005 does not provide the date from which the maintenance to be awarded and there is no provisions in the Hindu Adoption and Marriage Act with respect to the date from which the maintenance order may be made effective. But, at the same time, Section 125(2) Cr.P.C., contemplates that the Magistrate may award maintenance either from the date of order or from the date of application.



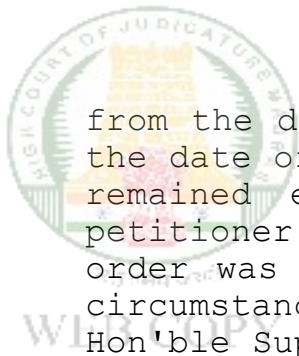
7. In a case filed under Section 125 Cr.P.C., the Hon'ble Supreme Court in **Jaiminiben Hirenghai Vyas and another Vs. Hirenghai Rameshchandra Vyas** reported in **2015(2) SCC 385** has held that Section 125 Cr.P.C., impliedly requires the Court to consider making the order for maintenance effective from either of the two dates, having regard to the relevant facts. For good reason, evident from its order, the Court may choose either date. It is neither appropriate nor desirable that a Court simply states that maintenance should be paid from either the date of order or the date of the application in matters of maintenance. Thus, as per Section 354(6) of the Cr.P.C., the Court should record reasons in support of the order passed by it, in both eventualities and that the purpose of the provision is to prevent vagrancy and destitution in society and the Court must apply its mind to the options having regard to the facts of the particular case.

8. Recently, the Hon'ble Supreme Court in **Crl.A.No.730 of 2020 (C. Rajnesh Vs. Neha and another)** after analyzing the provisions in various enactments and the Judgments and considering the divergent views taken by the various Courts, has issued necessary directions to bring about the uniformity in the orders passed by all the Courts and the relevant passage are extracted hereunder:

"Even though a Judicial discretion is conferred upon the Court to grant maintenance either from the date of application or from the date of order, in Section 125(2) Cr.P.C., it would be appropriate to grant maintenance from the date of application in all cases including the Section 125 Cr.P.C., In the practical working of the Provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for orders on end. It would therefore be in the interest of justice and fair play the maintenance is awarded from the date of application."

"It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all Courts, by directing that maintenance be awarded from the date on which the application was made before the concerned Court. The right to claim maintenance must date back to the date of filing of the application, since the period during which maintenance proceedings remained pending is not within the control of the applicant."

9. Considering the above, the Hon'ble Apex Court has categorically directed that all the Courts to award maintenance from the date of application. In the case on hand, the learned



from the date of application and for granting the reliefs only from the date of order. As already pointed out, the first respondent had remained ex parte. It is evident from the records that the petitioner has filed the case in the year 2014 and the impugned order was passed on 11.07.2017. Considering the above facts and circumstances and on applying the legal dictum laid down by the Hon'ble Supreme Court, this Court has no hesitation to hold that the impugned order granting maintenance from the date of order is liable to be set aside and the petitioner is entitled to get maintenance from the date of application.

10. In the result, the Criminal Revision Case is partly allowed and the first respondent is directed to pay the maintenance amount of Rs.5,000/- per month to the petitioner from the date of application.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

trp

To

The Judicial Magistrate,
Additional Mahila Court, Madurai.

Copy to:

The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai (2c)

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17.02.2021

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