

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.18019 of 2020

and

Crl.M.P.No.7067 of 2020

Siddhanantham @ A.S.Anand

...Petitioner / Respondent

Vs.

Thirupura Bhuvaneswari

...Respondent / Petitioner

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to CMP No.58 of 2019 in MC No.12 of 1992 on the file of the Family Court, Villupuram, (Old Case No. Crl.M.P.No.12 of 1992 on the file of the Judicial Magistrate-III, Villupuram) and quash the same.

For Petitioner : Mr.S.C.Vishwanath

For Respondent : Mr.A.S.Baradhi

ORDER

This Criminal Original Petition has been filed to call for the records relating to CMP No.58 of 2019 in MC No.12 of 1992 on the file of the Family Court, Villupuram, (Old Case No. Crl.M.P.No.12 of 1992 on the file of the Judicial Magistrate-III, Villupuram) and quash the same.

2. Learned Counsel for the petitioner would submit that the petitioner is the husband and the respondent is the wife. They got separated and also divorce granted in favour of the petitioner. While, being so, the respondent filed the petition in MC No.12 of 1992 under Section 125 of Cr.P.C., seeking maintenance for her and her two minor children in MC No.12 of 1992. The trial Court ordered maintenance in favour of the respondent herein and her two minor children at Rs.200/- for the respondent and Rs.75/- each to the two minor children and totally Rs.350/- as monthly maintenance payable by the petitioner herein by an order dated 14.06.1993.

3. However, the respondent did not file any petition under Section 128 of Cr.P.C., to enforce the order of maintenance passed under Section 125 of Cr.P.C. After a period of 26 years from the date of the order of maintenance, the respondent filed a petition in CMP No.58 of 2019 in MC No.12 of 1992 on the file of the Family Court, Villupuram is not maintainable.

4. Learned counsel for the petitioner also submitted that the children were maintained by the petitioner and they got married on the expense of the petitioner herein. The respondent is also living in the house stands in the name of the petitioner's mother. In fact, the respondent is also maintained by her two children. That apart, the order of maintenance passed under Section 125 of Cr.P.C., cannot be executed after a period of 26 years. In support of his contention, he has also relied on the Judgment of the Hon'ble Supreme Court in the case of 'Rajnish Vs Neha and Another reported in CDJ2020 SC 809', in which the Hon'ble Supreme Court has held with regards to Enforcement/Execution of orders of maintenance that,

" ... an order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V.Act; and Section 128 of Cr.P.C, as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly under Sections 51, 55, 58, 60 r.w. Order XXI..."

5. Therefore, the present petition seeking enforcement of the maintenance order under Section 128 of Cr.P.C is clearly barred by limitation. That apart, the respondent is living in the house owned by the petitioner's mother and she is also maintained by her two children.

6. In view of the above, this Criminal Original Petition stands allowed and as a sequel, the petition filed under Section 128 of Cr.P.C., in CMP No.58 of 2019 in MC No.12 of 1992 on the file of the Family Court, Villupuram, (Old Case No. CrI.M.P.No.12 of 1992 on the file of the Judicial Magistrate-III, Villupuram) is quashed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rgi/ham

To

1. The Family Court Judge,
Villupuram.
2. The Judicial Magistrate-III,
Villupuram.

+1cc to Mr.S.C.Vishwanath, Advocate, S.R.No.39035

+1cc to Mr.A.S.Baradhi, Advocate, S.R.No.38689

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NSK/12/07/2022