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Crl.R.C.No.1290 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.11.2022

PRONOUNCED ON : 25.11.2022

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1290 of 2022

and

Crl.M.P.No.13855 of 2022

Mohammed Yasin

... Petitioner

..VS..

1.Jannath

2.Minor Son Ameera

Represented by the Natural Guardian

his mother, the first respondent herein

... Respondents

Criminal Revision Case filed under Sections 397 r/w 401 Cr.P.C to set aside the order in Crl.M.P.No.6 of 2022 in M.C.No.13 of 2015 dated 28.06.2022 on the file of the Family Court, Perambalur.

For Petitioner : Mr.C.Sai Krishna
for Mr.V.Raghavachari

For Respondents : Mr.R.Venkatesulu

ORDER

This revision case has been preferred against the order dated 28.06.2022 made in Crl.M.P.No.6 of 2022 in M.C.No.13 of 2015 on the file of the Family Court, Perambalur.

Page No.1/12



Crl.R.C.No.1290 of 2022

WEB COPY

2. The petitioner is the husband and the first respondent is the wife of the petitioner and the second respondent is their minor son. The respondents herein filed a petition under Section 125 Cr.P.C in M.C.No.13 of 2015 before the learned Chief Judicial Magistrate, Perambalur seeking maintenance from the petitioner. After trial, the learned Chief Judicial Magistrate awarded a sum of Rs.5,000/- per month to each of the respondents herein as maintenance. The petitioner failed to pay the said maintenance amount and hence, the respondents filed a petition under Section 128 Cr.P.C in C.M.P.No.6 of 2022 before the Family Court, Perambalur for execution of the order of the learned Chief Judicial Magistrate, Perambalur. The Family Court, Perambalur after hearing the arguments advanced on either side had given an opportunity to the petitioner to pay the entire arrears amount and also directed to pay not less than a sum of Rs.10,000/- on or before 28.07.2022 to the respondents, failing which, directed to issue warrant for executing the order. Challenging the said order, the petitioner has preferred the present revision case before this Court.



Crl.R.C.No.1290 of 2022

WEB COPY

3.1 The learned counsel for the revision petitioner submitted that the Family Court, Perambalur has no jurisdiction to entertain the petition filed under Sections 125 to 128 Cr.P.C and the learned Magistrate alone got jurisdiction to try the cases. He further submitted that there is a bar under Section 3 of Muslim Women (Protection of Rights on Divorce) Act 1986.

3.2 The learned counsel for the revision petitioner by placing reliance on the decision of the Hon'ble Supreme Court in *Shahidul Haq Chisti Vs Smt.Rana Nahid @ Reshma @ Sana & Anr.* reported in *2010 SCC Online Raj 2819* submitted that the application filed under Section 125 Cr.P.C is maintained before the Magistrate, who is otherwise competent to hear the application under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

3.3 The learned counsel for the revision petitioner further submitted that the first respondent/wife voluntarily left the matrimonial home without any valid reason and the petitioner also sent an application to the Jammath seeking divorce, as per the Personal Law. The Special Act prevails over



Crl.R.C.No.1290 of 2022

general law and therefore, the respondents can only claim maintenance under the Special legislation and not under Section 125 Cr.P.C. The parties had settled their dispute under mutual agreements as early as on 2016 before the Jammath, and the petitioner herein also deposited a sum before the Jammath, which is readily available for disbursement to her as a fair and reasonable maintenance. Further, the Family Court has failed to consider the fact that a review petition is pending against the maintenance order. Therefore, the order passed by the Family Court is liable to be set aside.

4.1 Per contra, the learned counsel for the respondents submitted that the petitioner was directed to pay maintenance to the respondents as per the order of the learned Chief Judicial Magistrate, Perambalur dated 07.02.2019 in M.C.No.13 of 2015. Since the petitioner has not paid any maintenance amount, a huge arrears is to be paid by him for 81 months. Challenging the order of the learned Magistrate, no appeal or revision is pending and also no stay order is passed and hence, as on date, the order of the learned Magistrate is enforceable under law. The Judge, Family Court, Perambalur has rightly appreciated the entire materials and given an opportunity to the



Crl.R.C.No.1290 of 2022

petitioner to pay the entire arrears amount within a stipulated time, failing which, a warrant was ordered to be issued. However, the petitioner has not taken any steps to comply with the order of the Family Court, but in order to avoid the payment, he filed the present revision without any valid reason.

4.2 The learned counsel for the respondents further submitted that as far as jurisdiction of the Family Court is concerned, the Hon'ble Apex Court and this Court, time and again held that the Family Court has got jurisdiction to entertain the dispute with family affairs and has also got jurisdiction to entertain the petition filed under Section 125 Cr.P.C. Further, the Muslim Women (Protection of Rights on Divorce) Act, 1986 is applicable only to the divorced women and not to the women who are not divorced. Further, the claimants or beneficiaries can opt either of the Act and it is open to the Court to treat it as an application filed under the Muslim Women (Protection of Rights on Divorce) Act, 1986. Therefore, Family Court, has got jurisdiction to entertain it.

4.3 To support of his contentions, the learned counsel for the



Crl.R.C.No.1290 of 2022

respondents relied on the following decisions of the Hon'ble Apex Court and this Court:

- (i) ***Iqbal Bano Vs. State of U.P. and another*** reported in ***(2007) 6 SCC 785***
- (ii) ***Dawalsav Vs. Khajasab*** reported in ***(2009) 14 SCC 660***
- (iii) ***Shabana Bano Vs. Imran Khan*** reported in ***(2010) 1 SCC 666***
- (iv) ***Mustakim Vs. State of U.P and another*** reported in ***2015 SCC Online AII 4233***
- (v) ***Pazhaniappan @ Manickam Vs. Karuppannan and another*** [Crl.R.C.No.754 of 2021 dated 15.11.2021 (MHC)]

In the above judgments the Hon'ble Supreme Court has held that as per Sections 7(2)(a) and 8(b) of the Family Court Act, the Family Court has got jurisdiction to entertain the petition filed under Section 125 Cr.P.C., therefore, the petitioner cannot go against the decisions of the Hon'ble Apex Court.



Crl.R.C.No.1290 of 2022

WEB COPY

5. Heard the learned counsel on either side and also perused the materials available on record.

6. Admittedly, the respondents filed maintenance case before the learned Chief Judicial Magistrate, Perambalur in M.C.No.13 of 2015 and after trial, maintenance has been ordered. Against the maintenance order, the petitioner filed revision before the Principal District and Sessions Judge, Perambalur in Crl.R.No.4 of 2019 and the same was dismissed. As on date there is no appeal or revision or stay against the order of the Chief Judicial Magistrate, Perambalur. Further, the respondents filed execution petition in C.M.P.No.6 of 2022 before the Family Court, Perambalur under Section 128 Cr.P.C and the same was allowed.

7. The main contention raised by the learned counsel for the petitioner is that the Family Court has no jurisdiction to entertain the petition filed under Section 125 Cr.P.C and the learned Magistrate alone got jurisdiction to entertain the petition. In the case on hand, the petition filed under Section 125 Cr.P.C was dealt with by the Chief Judicial Magistrate, Perambalur and maintenance was ordered and therefore, the contention of the learned



Crl.R.C.No.1290 of 2022

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counsel for the revision petitioner is not acceptable. The respondents filed only execution petition before the Family Court, Perambalur. The petitioner has not proved that he has obtained customary divorce from his wife under the Personal Law Even in the counter filed by the revision petitioner in the maintenance case, he has not stated that he obtained divorce and the only defence taken by the revision petitioner is that the first respondent/wife voluntarily left the matrimonial home without any valid reason. That being the case, as per the decision of the Hon'ble Apex Court as cited by the learned counsel for the respondents Section 3 of Muslim Women (Protection of Rights on Divorce) Act, 1986 is only applicable to the divorced women and the divorced Muslim women also can file the petition under Section 125 Cr.P.C. Hence, it is open to the wife either she can choose to file a petition under the Muslim Women (Protection of Rights on Divorce) Act, 1986 or under the Code of Criminal Procedure. Previously, there was a bar under Section 125 Cr.P.C and now the position is settled by the Hon'ble Supreme Court on several decisions that there is no bar for divorced woman to file a petition under Section 125 Cr.P.C before the learned Magistrate or the Family Court. The Muslim divorced women can



Crl.R.C.No.1290 of 2022

invoke the provisions either under Section 3 (5) of Muslim Women (Protection of Rights on Divorce) Act, 1986 or under Section 125 Cr.P.C. In the present case, the petitioner has not proved that he obtained divorce from his wife and hence, there is no bar to file a petition under Section 125 Cr.P.C. Already, the learned Chief Judicial Magistrate passed order on the petition filed under Section 125 Cr.P.C and after establishment of the Family Court in the District now the impugned order before this Court is only an order passed under Section 128 Cr.P.C by the Family Court on the Execution Petition. Therefore, the contention raised by the learned counsel for the revision petitioner is not sustainable. The learned Judge, Family Court has got jurisdiction to entertain the petition filed under Section 128 Cr.P.C which was filed only to execute the order of the learned Chief Judicial Magistrate. Even otherwise, the Family Court has also got jurisdiction to entertain the petition filed under Section 125 Cr.P.C. The petitioner has not proved that he has paid all the arrears amount from the date of maintenance petition to till date. Therefore, this Court does not find



Crl.R.C.No.1290 of 2022

any infirmity in the order of the Court below and there is no merit in the revision and the same is liable to be dismissed.

8. In light of the above, this Criminal Revision Case is dismissed and the order dated 28.06.2022 made in Crl.M.P.No.6 of 2022 in M.C.No.13 of 2015 on the file of the Family Court, Perambalur is confirmed. The petitioner/husband is directed to pay the entire arrears amount to the respondents and submit a receipt before the Family Court or directed to deposit the entire amount before the Family Court, Perambalur to the credit of Crl.M.P.No.6 of 2022 within a period of two weeks from the date of receipt of a copy of this order, failing which, the learned Judge, Family Court, Perambalur is directed to issue warrant to the petitioner and detained him in prison and expedite the proceedings. Consequently, connected miscellaneous petition is closed.

25.11.2022

Note : Issue order copy on 28.11.2022

Index: Yes/No

Speaking Order/Non-Speaking Order

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Page No.10/12



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Crl.R.C.No.1290 of 2022

To

The Family Court,
Perambalur.



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Crl.R.C.No.1290 of 2022

P.VELMURUGAN, J.

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Crl.R.C.No.1290 of 2022
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