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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.23848 OF 2017

AND

CRL.M.P.NO.13815 OF 2017

Renuka

... Petitioner/
Respondent

Vs.

Viswanathan

... Respondent/
Petitioner

Prayer:

Criminal Original Petition has been filed under Section 482 Cr.P.C. to call for the records in Crl.M.P.No.131 of 2013 in M.C.No.48 of 2006 on the file of the Family Court, Pondicherry and quash the proceeding therein.

For Petitioner : Mr.N.Selvaraj
for Mr.V.V.Sairam

For Respondent : Mr.T.P.Manoharan
Senior Counsel
for Mr.K.P.Jotheeswaran

O R D E R

The Criminal Original Petition has been filed to call for the records in Crl.M.P.No.131 of 2013 in M.C.No.48 of 2006 on the file of the Family Court, Pondicherry and quash the same.

2.The petitioner is the wife of the respondent. Earlier, the petitioner filed a maintenance case in M.C.No.48 of 2006 before the Family Court, Pondicherry, which was dismissed by the trial Court by an order dated 18.07.2007, against which, the petitioner preferred a Criminal Revision in Crl.R.C.No.1285 of 2007.

3.This Court by an order dated 25.04.2011 set aside the



order of the trial Court and found that the petitioner is entitled to maintenance of Rs.25,000/- per month from the respondent from the date of petition and directed the respondent to pay the amount, against which, the respondent /Husband approached the Apex Court. The Apex Court dismissed the petition. Thereafter, the respondent filed a petition in CrI.M.P.No.131 of 2013 under Section 127(1) CrI.R.C with a prayer to alter the order of maintenance in M.C.No.48 of 2006 for subsequent change in circumstances and she is not entitled for maintenance and sought for modification.

4.The trial Court entertained the petition and kept pending for quite some time, thereafter, the respondent/husband filed a Criminal O.P.No.11788 of 2016 before this Court seeking for earlier disposal of CrI.M.P.No.131 of 2013 and the petitioner herein also participated in the same. Thereafter, this Court passed a conditional order on 04.07.2016 directing the petitioner/Husband to pay the arrears of maintenance to his wife Renuka and directed the case could be listed on 06.10.2016 for reporting compliance. On 06.10.2016, this Court found that the petitioner already complied with the direction of this Court and directed the Family Court, Puducherry, to dispose of CrI.M.P.No.131 of 2013 in M.C.No.48 of 2006 within a period of six months. At this stage, the petitioner/wife has filed this quash petition.

5.The contention of the learned counsel for the petitioner is that the Courts below erred in taking cognizance of petition in CrI.M.P.No.131 of 2013 filed under Section 127(1) Cr.P.C, no scope of dismissal of M.C.No.48 of 2006. The prayer sought in CrI.M.P.No.131 of 2013 is unknown to law beyond the scope of Section 127 Cr.P.C. Hence, filed this quash petition.

6.He further submitted that earlier the respondent herein filed an appeal before the Supreme Court, challenging the order passed in CrI.R.C.No.1285 of 2007 and the same was not entertained. Thereafter, the respondent filed CrI.M.P.No.131 of 2013, which is beyond the scope of Section 127 Cr.P.C. Further, submitted that by filing of such petition, the respondent is attempting to drag on the proceedings and failing to pay the maintenance amount as ordered by this Court. The only grievance now is that in the event of the respondent directed to proceed with CrI.M.P.No.131 of 2013, the petitioner should be permitted to adduce oral or other evidence. The petitioner admits receiving demand draft of Rs.15,75,000/- on 03.01.2022.

7.Counsel for the respondent submitted that in obedience to the order in CrI.O.P.No.11788 of 2016, demand draft for Rs.15,75,000/- handed over. Thereafter, proceeded with trial in CrI.M.P.No.131 of 2013 by examining three witnesses including



one Income Tax Officer. The petitioner herein participated in the proceedings, failed to cross examine none of the witnesses examined, on the other hand, approached this Court, obtained stay. Due to which, Crl.M.P.No.131 of 2013 could not be progressed. Hence, the direction issued by this Court order dated 06.10.2016 in Crl.O.P.No.11788 of 2016 to dispose of Crl.M.P.No.131 of 2013 in M.C.No.48 of 2006 within a period of six months could not be complied.

8.He further submitted that the respondent has got no objection for the petitioner to cross examine the witnesses and his contention is that the petition filed under Section 127(1) Cr.P.C. is maintainable, which is approved by this Court in Crl.O.P.No.11788 of 2016 the petitioner/wife participated in Crl.O.P.No.11788 of 2016 and not questioned maintainability of petition under Section 127(1) Cr.P.C. Now, for the purpose of dragging on the proceedings and to further continue the agony to the respondent, the petitioner filed this petition. Further, the petitioner/wife has suppressed the proceedings and order passed by this Court in Crl.O.P.No.11788 of 2016 earlier.

9.Considering the submissions and on perusal of the materials, the objections of the petitioner in entertaining petition under Section 127(1) Cr.P.C. in Crl.M.P.No.131 of 2013 in M.C.No.48 of 2006 cannot be countenanced. The Apex Court in the case of Sanjeev Kapoor Vs. Chandana Kapoor and others reported in (2020) 13 Supreme Court Cases 172 in para 24 extracting Sections 125 and 127 Cr.P.C. has held that Court after passing judgment or final order in proceedings under Section 125 Cr.P.C. does not become functus officio. It would be appropriate to extract the following paragraphs:

23.The closer look of Section 125 Code of Criminal Procedure itself indicates that the Court after passing judgment or final order in the proceeding Under Section 125 Code of Criminal Procedure does not become functus officio. The Section itself contains express provisions where order passed Under Section 125 Code of Criminal Procedure can be cancelled or altered which is noticeable from Section 125(1), Section 125(5) and Section 127 of Code of Criminal Procedure, which are to the following effect:

125(1). Order for maintenance of wives, children and parents. -

(1) if any person having sufficient means neglects or refuses to maintain-



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(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, 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:

[Provided that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this Sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation. - For the purposes of this Chapter, -

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (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.

125(5). On proof that any wife in whose favour an order has been made under this Section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by



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mutual consent, the Magistrate shall cancel the order.

127. Alteration in allowance. - [(1) On proof of a change in the circumstances of any person, receiving, Under Section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same Section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.]

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made Under Section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made Under Section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that -

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage.

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order -

i) in the case where such sum was paid before such order, from the date on which such order was made,

ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to [maintenance or interim maintenance, as the case may be] after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom monthly allowance for the maintenance and interim maintenance or



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any of them has been ordered to be paid Under Section 125, the Civil Court shall take into account that sum which has been paid to, or recovered by, such person as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of the said order"

25. In Section 125 Code of Criminal Procedure uses the expression used is "as the Magistrate from time to time direct". The use of expression 'from time to time' has purpose and meaning. It clearly contemplates that with regard to order passed Under Section 125(1) Code of Criminal Procedure, the Magistrate may have to exercise jurisdiction from time to time. Use of expression 'from time to time' in is exercise of jurisdiction of Magistrate in a particular case. Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd edition defines 'time to time' as follows:

Time to time. As occasion arises

26. The above Legislative Scheme indicates that Magistrate does not become functus officio after passing an order Under Section 125 Code of Criminal Procedure, as and when occasion arises the Magistrate exercises the jurisdiction from time to time. By Section 125(5) Code of Criminal Procedure, Magistrate is expressly empowered to cancel an order passed Under Section 125(1) Code of Criminal Procedure on fulfilment of certain conditions.

27. Section 127 Code of Criminal Procedure also discloses the legislative intendment where the Magistrate is empowered to alter an order passed Under Section 125 Code of Criminal Procedure Sub-section (2) of Section 127 Code of Criminal Procedure also empower the Magistrate to cancel or vary an order Under Section 125. The Legislative Scheme as delineated by Sections 125 and 127 Code of Criminal Procedure as noted above clearly enumerated the circumstances and incidents provided in the Code of Criminal Procedure where Court passing a judgment or final order disposing the case can alter or review the same. The embargo as contained in Section 362

is, thus, clearly relaxed in proceeding Under Section 125 Code of Criminal Procedure as indicated above.

28. The submissions which have been pressed by the learned Counsel for the Appellant were founded only on embargo of Section 362 and when embargo of Section 362 is



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expressly relaxed in proceeding Under Section 125 Code of Criminal Procedure, we are not persuaded to accept the submission of counsel for the Appellant that the Family Court was not entitled to set aside and cancel its order dated 06.05.2017 in facts and circumstances of the present case."

it is seen that now the only grievance of the petitioner is that she should be given an opportunity to cross examine the witnesses, already three witnesses were examined including the Income Tax Officer. In view of the same, the petitioner further not to delay the proceedings in Crl.M.P.No.131 of 2013, the trial Court is reminded that this Court in Crl.O.P.No.11788 of 2016 by an order dated 06.10.2016 already issued a direction to dispose of Crl.M.P.No.131 of 2013 within a period of six months, hence, the trial Court to dispose of Crl.M.P.No.131 of 2013 within a period of four months from the date of receipt of a copy of this order. Accordingly, the Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

sms

To

The Judge,
The Family Court, Pondicherry.

+1cc to Mr.V.V.Sairam, Advocate, S.R.No.22571

+1cc to Mr.K.P.Jotheeswaran, Advocate, S.R.No.22536

Crl.O.P. No.23848 of 2017
and
Crl.M.P.No.13815 of 2017

SRII (CO)
PM/27/04/2022