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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.07.2023

Coram:

The Hon'ble Mr.Justice V.SIVAGNANAM

**Crl.O.P.No.7651 of 2021
and Crl.M.P.Nos.5072 & 5073 of 2021**

Mr.G.S.Sreenath

...Petitioner

Versus

Mrs.Chaithra R.Jadhav

...Respondent

This Criminal Original Petition is filed under Section 482 of Cr.P.C praying to call for the records and quash the proceedings in M.C.No.7 of 2021 pending on the file of the Family Court, Cuddalore.

For Petitioner : Mr.Gururaj
for Mr.D.Baskar

For Respondent : Mr.M.Sanathkumar



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ORDER

This Criminal Original Petition has been filed by the petitioner seeking to quash the proceedings in M.C.No.7 of 2021 pending on the file of Family Court, Cuddalore.

2. The brief facts of the case are as follows:

The petitioner and respondent are husband and wife. They got married on 14.12.2005 as per the Hindu rites and customs. They have two children viz., Varchas (son) and Samhita (daughter). Due to misunderstanding arose between the parties, they were separated and the respondent/wife filed a petition in O.P.No.294 of 2020 before the Family Court, Cuddalore seeking divorce. While the said O.P is pending, the respondent/wife filed a petition in M.C.No.7 of 2021 under Section 125 of Cr.P.C seeking to direct the petitioner/husband to provide a sum of Rs.1,25,000/- every month towards welfare and maintenance viz., shelter and food to her as well as her children. The said M.C.No.7 of 2021 is also pending before the Family Court, Cuddalore. Now, the petitioner/husband



has filed the present original petition for the relief stated *supra*.

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3. The learned counsel for the petitioner/husband submitted that since the petitioner/husband is working as a Senior Surgeon at JIPMER Hospital, Pudhucherry, he is unable to attend the court proceedings regularly. However, the petitioner/husband is ready to proceed with the case in O.P.No.294 of 2020 as well as M.C.No.7 of 2021 pending before the Family Court, Cuddalore. He further submitted that the respondent/wife is entitled for permanent alimony under Section 25 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'HM Act'), but, she cannot claim permanent alimony from the petitioner/husband under Section 125 of Cr.P.C. Therefore, the learned counsel prayed this Court to quash the proceedings initiated by the respondent/wife in M.C.No.7 of 2021 before the Family Court, Cuddalore. In support of his submissions, he has relied on the judgments viz., ***Rakesh Malhotra Vs. Krishna Malhotra*** reported in **2020 14 SCC 150** and ***Gomathi & Anr. Vs. Sacraties*** reported in **2020 5 L.W.196**.



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4. *Per Contra*, the learned counsel appearing for the respondent/wife submitted that the respondent/wife is entitled to file a petition under Section 125 of Cr.P.C for maintenance. The respondent/wife has a statutory right to claim maintenance from the petitioner/husband. Hence, the learned counsel prayed for dismissal of this criminal original petition.

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

6. On perusal of the records, the fact reveals that the respondent/wife moved a petition in O.P.No.294 of 2020 before the Family Court, Cuddalore seeking divorce from the petitioner/husband. During the pendency of O.P.No.294 of 2020, she had filed a petition in M.C.No.7 of 2021 under Section 125 of Cr.P.C seeking to direct the petitioner/husband to provide a sum of Rs.1,25,000/- towards the monthly maintenance and welfare of herself and her children.



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7. Section 7(2)(a) of the Family Courts Act, 1984 enables a Family Court to exercise its jurisdiction relating to order for maintenance of wife, children and parents. Therefore, the petition filed by the respondent/wife in M.C.No.7 of 2021 under Section 125 of Cr.P.C before the Family Court, Cuddalore seeking maintenance for herself and her children is legally maintainable.

8. At this juncture, it is pertinent to discuss about the judgments relied by the learned counsel for the petitioner/husband. In the case of ***Rakesh Malhotra Vs. Krishna Malhotra*** reported in ***2020 14 SCC 150***, after obtaining the permanent alimony under Section 25 of the Act, the wife filed an application under Section 125 of Cr.P.C for maintenance. Hence, the Hon'ble Supreme Court has held that the Maintenance Application preferred under Section 125 of Cr.P.C shall be treated and considered as application preferred under Section 25(2) of the HM Act. Similarly, in the case of ***Gomathi & Anr. Vs. Sacraties*** reported in ***2020 5 L.W.196***, the wife filed an application under Section 12 of the Domestic Violence Act, 2005 (for brevity, 'DV Act') seeking reliefs including maintenance under Sections



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18, 19 & 20 of the DV Act for herself and her two minor sons. The said application was allowed and interim maintenance was also granted to the wife and her two minor sons. Thereafter, the wife filed a petition before the Family Court by invoking the provision under Section 26(1) of the DV Act seeking interim maintenance, however, the same was dismissed by the Family Court. Hence, the wife preferred a Civil Miscellaneous Appeal before this Court, but, this Court has dismissed the appeal by holding that the learned Family Court Judge has rightly dismissed the petition filed under Section 26(1) of the DV Act. So, the judgments relied by the learned counsel for petitioner are factually not supportive to the case of petitioner/husband.

9. Considering the facts and circumstances of the case and also, having regard to the submissions made by the learned counsel on either side, this Court is of the opinion that the petition filed by the respondent/wife in M.C.No.7 of 2021 before the Family Court, Cuddalore seeking maintenance for herself and her children is maintainable in law.



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10. In the result, this criminal original petition is dismissed and the learned Family Court Judge, Cuddalore is directed to dispose O.P.No.294 of 2020 and M.C.No.7 of 2021 simultaneously, within a period of three months from the date of receipt of a copy of this order. It is also made clear that while deciding O.P.No.294 of 2020 & M.C.No.7 of 2021, the learned Family Court Judge, Cuddalore may grant maintenance to the respondent/wife and her children, either under Section 25 of the HM Act or under Section 125 of Cr.P.C. Consequently, connected miscellaneous petitions are closed.

17.07.2023

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To

The Public Prosecutor,
High Court, Madras.



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V.SIVAGNANAM, J.

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