



Crl.R.C.No.1076 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

**CRL.R.C.NO.1076 OF 2022 &
Crl.M.P.No.6138 of 2023**

Mahendran

.. Petitioner

Vs

Jayanthi

... Respondent

Prayer: Criminal Revision Case filed under section 397 r/w. 401 Cr.P.C. to set aside the order dated 19.04.2022 passed by the Chief Judicial Magistrate, Thiruvarur in Crl.M.P.No.245 of 2017 in M.C.No.24 of 2013, in so far as ordering cancellation of the order of maintenance from the date of passing of the order and to set aside the same accordingly.

For Petitioner : Mr.A. Arunbabu

For Respondent : Mrs.A.N. Meenakshi



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ORDER

This Criminal Revision case has been filed to set aside the order dated 19.04.2022 passed by the Chief Judicial Magistrate, Thiruvarur in Crl.M.P.No.245 of 2017 in M.C.No.24 of 2013, in so far as ordering cancellation of the order of maintenance from the date of passing of the order and to set aside the same accordingly.

2. The learned counsel for the revision petitioner submitted that the petitioner is the husband and respondent is his wife. The respondent/wife filed a maintenance petition in M.C.No.24 of 2013 before the learned Judicial Magistrate, Thiruvarur seeking maintenance. After enquiry, the learned Magistrate, by his order dated 11.04.2014, ordered maintenance of Rs.2,500/- from the date of petition. The petitioner/husband filed a divorce petition before the Subordinate Judge, Thiruvarur in HMOP.No.13 of 2008 on the ground of immoral life of the wife. The trial court, by its order dated 15.12.2015, dismissed the same. Against which, he filed CMA.No.5 of 2017 before the Principal District and Sessions Judge, Thiruvarur and the same was allowed on 29.11.2018. Aggrieved against the judgment passed in CMA.No.5



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of 2017, the respondent/wife filed second appeal in C.M.S.A.No.3 of 2020 before this Court and this court, by order dated 22.03.2021, dismissed the second appeal. Under these circumstances, the immoral life of the wife is confirmed by this court. Therefore, the respondent/wife is not entitled for maintenance from the petitioner. Hence, he filed an application under section 27 of Cr.P.C., before the learned Chief Judicial Magistrate, Thiruvarur. The learned judge, by his order dated 19.04.2022, the allowed the application, but in the operative portion, he ordered to pay maintenance from the date of petition till 19.4.2022 and the same is challenged now. Since the petitioner established immoral life of the respondent/wife, she is not entitled to claim maintenance up to 19.04.2022. Thus he pleaded to set aside that order.

3. The learned counsel appearing for the respondent/wife submitted that the relation ship between the petitioner and the respondent is admitted. In the maintenance case, the respondent wife filed maintenance case against the petitioner/husband in M.C.No.24 of 2013, wherein, it was awarded to pay Rs.2500/- as maintenance to the respondent/wife.



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4. The learned counsel for the respondent further submitted that in view of section 127 (1) of Cr.P.C., the Magistrate has no power to cancel or vary the order from the date of granting maintenance, but he can modify the order only from the date of the application seeking for such modification and not earlier. To support the argument, the learned counsel relied on the judgment of the ***Kerala High Court in the case of Jumaila Beevi Vs. A. Nissar*** and thus pleaded to dismiss the revision.

5. Heard both sides and perused the impugned order and other material evidence on record.

6. On perusal of records, the respondent/wife filed a maintenance case in M.C.No.24 of 2013 before the learned Chief judicial Magistrate, Tiruppur, claiming maintenance of Rs.2000/-. After enquiry, the learned Magistrate, by its order dated 19.04.2022 granted maintenance of Rs.2,500/- per month from the date of petition. This order is not challenged by the petitioner/husband. Further, it is noted that the petitioner filed a divorce petition before the learned Subordinate Judge, Tiruppur in HMOP.No.13 of 2008 on the ground of



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immoral life lead by the respondent/wife. The trial court, by order dated 15.12.2015, dismissed the said petition. Aggrieved over the same, the petitioner/husband has filed an appeal in CMA.No.5 of 2017 before the learned Principal District Judge, Tiruvarur and the same was allowed by the court below, by order dated 29.04.2018. Aggrieved by the same, the respondent wife filed appeal before this Court in CMSA.No.3 of 2020, wherein, this court, by its order dated 22.03.2021 confirmed the order of the appellate court. In the circumstances, it is upheld that the wife is living immoral life and divorce has been granted on that ground. In the circumstances, the respondent wife is not entitled to claim maintenance against her husband.

7. The question to be decided now is whether the alteration in allowance taken place as per section 127 Cr.P.C

Section 127 of Cr.P.C., read as follows;

127. Alteration in allowance

(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife, child, father of mother, as



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the case may be, the Magistrate may make such alteration in the allowance as he thinks fit:

Provided that if he increases the allowance, the monthly rate of five hundred rupees in the whole shall not be exceeded

(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



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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 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 a monthly allowance has been ordered to be paid under section 125, the civil Court shall take into account the sum which has been paid to, or recovered by, such person as monthly allowance in pursuance of the said order'

8. In view of the above provision, in the instant case, change in circumstances, for declining the allowance to wife, which was ordered by the court below arise only on 29.11.2018, when divorce was granted to the petitioner and before the change in circumstances of the opinion, **liability for the husband for non payment of maintenance does not arise**. Only on 29.11.2018, the opinion of entitlement of maintenance to wife is established and upheld by the court. Therefore, from the date of divorce granted on the ground of immoral life of the wife, the wife is not entitled to claim maintenance from the husband. So the payment of maintenance to the wife can be cancelled



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from the date of granting divorce onwards, i.e., from 29.11.2018.

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9. In view of the above, the impugned order passed by the court below in Crl.M.P.No.245 of 2017 in M.C.No.24 of 2013 is modified to the effect that instead of 19.04.2022, the petitioner has to pay the maintenance to the wife/respondent as ordered by the court in M.C.No.24 of 2023 from the date of petition till the date of divorce granted on 29.11.2018.

10. With the above modification, this Criminal Revision is disposed of. Consequently, the the connected miscellaneous petition is closed.

11. The petitioner is directed to pay the arrears of maintenance from the date of petition till 29.11.2018 withinin three months from the date of receipt of a copy of this order. Till such time, no warrant should be issued for collection of arrears of maintenance amount.

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Internet:yes/no

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To

The Chief Judicial Magistrate, Thiruvarur



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V. SIVAGNANAM, J.

msr

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