

C.M.A.(MD) No.825 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

C.M.A.(MD) No.825 of 2023
and
C.M.P.(MD) No.11657 of 2023

Kumar

... Appellant

-vs-

1.Gomathi

2.Minor.Suhashini
rep.by the first respondent

... Respondents

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, praying to set aside the fair and decreetal order, dated 27.06.2023, passed in M.C.No.15 of 2022 in H.M.O.P.No.34 of 2022, on the file of the Family Court, Tirunelveli.

For Appellant : Ms.K.Anusuya

J U D G M E N T

[Judgment of the Court was made by S.S.SUNDAR, J.]

This civil miscellaneous appeal is directed against the fair and decreetal order, dated 27.06.2023, passed in M.C.No.15 of 2022 in H.M.O.P.No.34 of 2022, by the Family Court, Tirunelveli.

2. It is not in dispute that the appellant is the husband. The appellant's wife and minor daughter, who are respondents herein, filed M.C.No.15 of 2022, before the Family Court, Tirunelveli, under Section 125 of the Code of Criminal Procedure, 1973 (in short, "Cr.P.C.") for maintenance.

3. The Family Court, Tirunelveli, by order dated 27.06.2023, partly allowed the said petition directing the appellant herein to pay a sum of Rs.7,500/- (Rupees seven thousand and five hundred only) per month to the wife / first respondent herein and Rs.6,000/- (Rupees six thousand only) per month to the minor daughter / second respondent herein and also directed the appellant to pay a sum of Rs.3,000/- (Rupees three thousand only) towards litigation expenses to the respondents herein. Questioning the quantum of maintenance that was awarded by the Family Court, Tirunelveli,

in favour of the respondents herein, the appellant has filed this civil miscellaneous appeal.

4. This Court, in ***Maria Antony Chandra Prakash, s/o. James vs. Sheela Regina***, reported in ***2023-1-L.W.(Crl.) 768***, has held that no appeal will lie as against the order passed by the Family Court even in an application filed under Section 125 Cr.P.C., as the said order is revisable in terms of Section 397 Cr.P.C., read with Section 19(4) of the Family Courts Act, 1984. The relevant portion of the said decision is extracted hereunder:

“10. Though the learned Single Judge has come to the conclusion that criminal jurisdiction cannot be invoked under Section 397 of the Code of Criminal Procedure against any order relating to the right of maintenance, as referred to by us already, a careful reading of Section 7(2)(a) and Section 10(2) of the Family Courts Act vividly makes the position clear that the Family Court is also considered as a Criminal Court and therefore, the provisions of the Code of Criminal Procedure or the Rules made thereunder shall apply to the proceedings under Chapter IX before a Family Court. This view of ours is also supported by a judgment of the Full Bench of the Madhya Pradesh High Court in Rajesh Shukla v. Meena [2005 (2) MPLJ 483], wherein, in paragraphs 4 and 5, it

has been held as under:

“4. From bare perusal of sub-section (2) of Section 7 of the Act, it is apparent that jurisdiction exercisable by a Magistrate of First Class under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) relates to maintenance of wife, children and parents. Thus, under Sub-section (2) of Section 7, the Family Court exercises the jurisdiction of Magistrate First Class under Chapter IX of the Code of Criminal Procedure (hereinafter, referred to as the "Code"). Section 8 relates to exclusion of jurisdiction and pending proceedings. Under Clause (b) of Section 8 no Magistrate, shall, in relation to such area, have or exercise any jurisdiction or power under Chapter IX of the Code. So powers of a Magistrate under Chapter IX of the Code can be exercised at a place where Family Court is established by the Family Court only and not by other Judicial Magistrate of the district. Section 10 of the Act provides for the procedure. Subsection (2) of Section 10 provides that subject to the other provisions of this Act and the rules, the provisions of the Code or rules made thereunder, shall apply to the proceedings under Chapter IX of the Code before a Family Court. Sub-section (2) of Section 18 of the Act provides that an order passed by a Family Court under Chapter IX of the Code shall be executed in the manner

prescribed for the execution of such order by that Code.

5.From a perusal of the scheme of the Act, it is clear that Family Court exercises two types of powers. Cases except the case under Chapter IX of the Code are decided by the Family Court as a District Court. The Family Court while dealing with the proceedings under Chapter IX of the Code Family Court exercises the jurisdiction of a Judicial Magistrate First Class. In the circumstances, when orders have been passed in exercise of the provisions of the Code, revision before this Court under Section 19(4) of the Act cannot be termed as Civil Revision. Proceedings are arising out of the Code, thus essentially final orders so passed will be revisable under Section 19(4) of the Act as Criminal Revision."

11.In the light of the above legal position, the issue is no longer res integra, hence, we are of the considered view that as against the order passed by a Family Court either refusing or granting maintenance in favour of the wife or husband, the aggrieved party can always file a criminal revision under Section 397 Code of Criminal Procedure. Further, even though the right of maintenance is a civil right, but, in the present context of having a remedy against the order directing the payment of

such maintenance, it has to be seen that under Section 125(3) of Code of Criminal Procedure, in case of noncompliance, the Family Court has to issue a warrant levying the amount due as if it is fine and will have to sentence such a person for imprisonment as provided. This apart, as per Section 126(2) of Code of Criminal Procedure, the Family Court/Judicial Magistrate has to proceed in the matter as if it is a summons case. Coupled with this, on a consideration of the provisions in Sections 7(2)(a), 10, 18 and 19 of the Family Courts Act, we have no hesitation to hold that the aggrieved persons have to file only a Criminal Revision Petition under Section 397 of Code of Criminal Procedure read with Section 19(4) of the Family Courts Act. Therefore, we direct the Registry to list the Criminal Revision Case No. 1094 of 2021, as per roster, before the learned single Judge for disposal of the same on merits and in accordance with law.”

5. In view of the law laid down by this Court earlier, this Court finds that this civil miscellaneous appeal is not maintainable.

6. Hence, giving liberty to the appellant to file a criminal revision petition under Section 397 Cr.P.C., this civil miscellaneous appeal is

dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [D.B.C., J.]

11.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

- 1.The Judge,
Family Court,
Tirunelveli.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

S.S.SUNDAR, J.
and

C.M.A.(MD) No.825 of 2023

D.BHARATHA CHAKRAVARTHY, J.

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