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Crl.R.C.No.1182 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.08.2023

PRONOUNCED ON : 14.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE **P.VELMURUGAN**

Crl.R.C.Nos.1182 of 2013 and
M.P.Nos.1 of 2013 and 1 of 2015

P.S.Giridharan

...Petitioner

- Vs-

Chitra

...Respondent

Prayer: Criminal Revision Case filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the order of the learned Judicial Magistrate, Tambaram, dated 04.04.2013 made in Crl.M.P.No.98 of 2012 in M.C.No.24 of 2011.

For Petitioner : Mr.K.Mani

Respondent : Mr.V.Krishnan for Mr.N.Rajavadivelu



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ORDER

The petitioner is husband and respondent is wife. The respondent/wife filed petition before the learned Judicial Magistrate, Tambaram, under Section 125 Cr.P.C. seeking maintenance of Rs.12,000/-, in which the learned Magistrate ordered Rs.8000/- as interim maintenance, against which, the husband filed present revision.

2 The case of the respondent/wife is that the marriage between the petitioner and the respondent took place on 27.11.2009 at Sri Sumathy Kalyana Mandapam, Trichy, and due to misunderstanding the petitioner and the respondent living separately. The respondent/wife filed a petition for divorce in H.M.O.P.No.346 of 2010 and got the decree of divorce and since the petitioner/husband is a man of means and he neglected to maintain his wife, the wife has filed a petition under Section 125 Cr.P.C. seeking maintenance of Rs.12,000/- and she also filed a miscellaneous petition in C.M.P.No.98 of 12. The learned Magistrate after hearing both the parties,



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ordered a sum of Rs.8,000/- as interim maintenance and challenging the same, the husband is before this Court with the present criminal revision case.

3 Learned counsel appearing for the petitioner/husband would submit that the respondent/wife had a petition in H.M.O.P.No.346 of 2010 under Section 24 of the Hindu Marriage Act, seeking divorce, in which she also filed an application in I.A.No.125 of 2011 seeking interim maintenance and she had already been granted maintenance of Rs.12,000/- p.m. by the Subordinate Judge in the said application. Therefore the respondent/wife is not entitled to invoke Section 125 Cr.P.C. The learned Magistrate failed to appreciate the fact that the respondent/wife filed petition under Section 24 of the Hindu Marriage Act seeking divorce, which is pending, and she is already getting maintenance of Rs.12,000/- and erroneously ordered Rs.8,000/- as interim maintenance, which cannot be permitted in law.

3.1 The learned counsel would further submit that it is settled law that the provision for grant of maintenance under Section 125 Cr.P.C. is



summary in nature and it is subject to the orders of the Civil Court and in this case as the Civil Court in H.M.O.P.No.346 of 2010 has already granted maintenance the respondent/wife, there is no question of invoking Section 125 Cr.P.C. Hence the order of interim maintenance by the learned Magistrate is wrong and amounts to double maintenance to the respondent/wife.

3.2 Further the learned counsel would submit that petitioner/husband lost his job because of the attitude of the respondent/wife and the learned Magistrate failed to note that the respondent was employed and was earning huge salary and she did not even bother to see the petitioner's inability.

3.3 Section 125 Cr.P.C. is very clear that the husband having sufficient means neglected to maintain his wife and if the wife is unable to maintain herself, then the wife is entitled to get maintenance from the husband. But, in this case, the respondent/wife is able to maintain herself and she already got order of maintenance in the petition under Section 24 of



the Hindu Marriage Act and the Magistrate failed to consider all these aspects and erroneously granted maintenance of Rs.8,000/- once again, which is liable to be set aside.

4 The learned counsel appearing for the respondent/wife would submit that the wife getting maintenance under Section 24 of the Hindu Marriage Act is not a bar to invoke Section 125 Cr.P.C. The petitioner/husband is a man of means and he neglected his wife to maintain and driven the respondent/wife out from the matrimonial home and since the wife unable to maintain herself, she filed petition under Section 125 Cr.P.C. and when the main case is pending, in order to get interim maintenance, she filed the criminal miscellaneous petition. The learned Magistrate rightly appreciated the evidence and granted interim maintenance of Rs.8,000/-, since the respondent/wife satisfied the ingredients of Section 125 Cr.P.C. Hence there is no merit in the revision and the same is liable to be dismissed.



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

6 Relationship of the parties are not in dispute. The respondent/wife filed petition in H.M.O.P.No.346 of 2010 under Section 24 of Hindu Marriage Act against the petitioner/husband for divorce before the learned Subordinate Judge, Tambaram. The respondent/wife has also filed two petitions under Section 24(a) and 24(b) of Hindu Marriage Act and Section 151 of CPC seeking interim maintenance of Rs,12,000/- and litigation expenses of Rs.10,000/- pending disposal of the petition seeking divorce. The learned Subordinate Judge, by a common order dated 10.08.2011 dismissed the petition in I.A.No.126 of 2011 seeking litigation expenses and allowed the petition in I.A.No.125 of 2011 seeking interim maintenance and ordered Rs.12,000/- as interim maintenance till the disposal of the main petition. Thereafter the respondent/wife has filed maintenance case in M.C.No.24 of 2011 seeking maintenance of Rs.12,000/- and she also filed C.M.P.No.98 of 2012 seeking interim



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maintenance of Rs.12,000/- and the learned Magistrate ordered Rs.8,000/- as interim maintenance, which is impugned in the present revision.

7 It is the main contention of the learned counsel for the petitioner/husband that the respondent/wife had already got an order of maintenance in the petition filed under Section 24 of Hindu Marriage Act and hence she cannot invoke Section 125 Cr.P.C. and the petitioner lost his job because of the respondent and she also employed and earning huge salary and therefore she is not entitled to get maintenance from the petitioner/husband.

8 This Court carefully perused the order dated 10.08.2011 made in I.A.No.125 of 2011 in H.M.O.P.No.346 of 2010 filed by the respondent/wife under Section 24(a) of Hindu Marriage Act seeking interim maintenance, wherein, the learned Subordinate Judge, Tambaram, has granted Rs.12,000/- as interim maintenance only till the disposal of the petition under Section 24 of the Hindu Marriage Act seeking divorce on the ground of impotency filed by the respondent/wife in H.M.O.P.No.346 of

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2010. It is seen that an ex-parte order was passed on 21.10.2011, wherein divorce was granted by the learned Subordinate Judge, Tambaram.

Therefore the divorce petition was disposed of in the year 2011 itself and the petitioner/husband did not produce any document to show that he is paying maintenance to the respondent/wife even after disposal of the above petition. Under such circumstances, this Court does not find any error in the order of the learned Magistrate in granting interim maintenance of Rs.8,000/-

9 However, the respondent/wife would have filed a petition under Section 25 of the Hindu Marriage Act seeking permanent alimony and could have got an order for permanent alimony in the petition filed for divorce in H.M.O.P.No.346 of 2010 itself. But, due to the wrong guidance of the counsel, she has filed a petition in M.C.No.24 of 2011 seeking maintenance and since there was delay in the proceedings, she has filed the miscellaneous petition in C.M.P.No.98 of 2012, invoking Section 125 Cr.P.C. Therefore the order passed in the application filed under Section 24 of Hindu Marriage Act granting maintenance of Rs.12,000/- was only till



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the disposal of the petition seeking divorce and that was decided on 21.10.2011 itself. There is no proof to show that the petitioner/husband is paying maintenance to the respondent/wife even after disposal of the petition for divorce.

10 Section 125 Cr.P.C. is very clear that when husband having sufficient means, neglected his wife to maintain, who is unable to maintain herself, then the wife is entitled to get maintenance from the husband, except when the husband proves that the wife has sufficient means to maintain herself, she is living in adultery and left matrimonial home without valid reason. In this Case, the husband neither proved that the wife is earning huge salary by producing documents nor proved that she is living in adultery or left matrimonial home without any valid reason. Therefore this Court does not find any illegality or irregularity in the order of maintenance of Rs.8,000/- granted by the learned Magistrate.

11 In view of the foregoing reasons and observations, the criminal revision case shall stand dismissed. Consequently, connected miscellaneous



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petitions are closed. The learned Judicial Magistrate, Tambaram, is directed to dispose of the main case in M.C.No.24 of 2011, without influenced by any of the observations made by this Court, within a period of one month from the date of receipt of a copy of this order, if already not disposed of.

14.03.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation Case : Yes/No

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To
The Judicial Magistrate, Tambaram.



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P.VELMURUGAN, J.,

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Pre-Delivery Order in
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M.P.Nos.1 of 2013 and 1 of 2015

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