



CrI.R.C.No.1624 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.12.2023
PRONOUNCED ON : .02.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.1624 of 2023
and
CrI.M.P.No.15260 of 2023

Gopalakrishnan

... Petitioner

Vs.

1.Yamuna

2.Minor Lavanya, F/26,
D/o.Gopalakrishnan,
Rep. by her next friend mother and guardian 1st respondent Yamuna
Ganapathi Agraharam,
Kodumudi,
Erode District.

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records and set aside the order dated 23.06.2023 made in C.M.P.No.2065 of 2020 in M.C.No.2 of 2012 on the file of the District Munsif cum Judicial Magistrate Court, Kodumudi by allowing this Criminal Revision Petition.

For Petitioner : Mr.R.Prabakar

For Respondents : Mr.S.A.Sayed Shuhaibb



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ORDER

Challenging the impugned order, dated 23.06.2023 in C.M.P.No.2065 of 2015 passed by the learned Judicial Magistrate cum Judicial Magistrate, Kodumudi, this Criminal Revision Case has been filed.

2.The learned counsel for the petitioner submitted that the respondents filed a maintenance case in M.C.No.2 of 2012 before the learned District Munsif cum Judicial Magistrate, Kodumudi seeking monthly maintenance. The marriage between the petitioner and the 1st respondent was solemnized on 17.11.1996. Out of their marriage, the 2nd respondent was born to them on 17.10.1997. The case projected by the 1st respondent is that the 1st respondent chased out from the matrimonial home in the year 1997 and she was subjected to cruelty at the hands of the petitioner. Further, she made false allegation as though the petitioner is running a tea shop and earning Rs.15,000/- per month and he has own house and agricultural lands. He further submitted that it is the respondents who proclaimed that she was not interested with the marriage with the petitioner and she used to pick up quarrel often. Every six months, she would go to her parents house, stay



back for sometime and later would return. On certain occasions, she was found missing for two or three days without informing the petitioner and her parents. Further, she used to lodge frequent complaint to the Police and thereby, the petitioner was harassed and humiliated at the hands of the 1st respondent. The respondents took away all her jewels and articles and she voluntarily left the matrimonial home and residing with her parents. Suppressing the real facts, the respondent filed the maintenance case and the order came to be passed against the petitioner on 09.04.2015 directing the petitioner to pay monthly maintenance of Rs.750/- per month to the 1st respondent and to pay Rs.2,000/- per month to the 2nd respondent on or before 15th of every English calendar month. Since the petitioner was running a small tea shop and having not much income, he was unable to comply with the order and pay maintenance.

3.He further submitted that the respondents filed a petition under Section 125(3) Cr.P.C., in C.M.P.No.2065 of 2015 stating that the petitioner to pay the arrears of Rs.1,10,000/- from 27.02.2012 to 31.05.2015 and further he has not paid any maintenance amount. Initially, the lower Court passed order on 03.02.2023 directing the petitioner to make the payment to



the respondents. For non-compliance of the order, NBW issued against the petitioner and thereafter, he was arrested on the strength of NBW. Since the petitioner was not found willing to pay the maintenance amount, the lower Court vide order, dated 23.06.2023 convicted and sentenced the petitioner to undergo Simple Imprisonment for twenty months i.e., calculated as fifteen days Simple Imprisonment for one month default from 27.02.2012 to 31.05.2015 and also observed that if the petitioner makes the payment of monthly maintenance for the said period totally Rs.1,10,000/- in the amidst, it is ordered to be released on that day itself.

4.He further submitted that the order of the lower Court imposing twenty months imprisonment is against law. No Magistrate cannot impose punishment for a period of twenty months under Section 125(3) Cr.P.C. He further submitted that it is a case of non-payment of maintenance amount and not an offence, hence, no conviction can be passed against the petitioner. Added to it, the petitioner was not given opportunity and no enquiry conducted with the petitioner. The petitioner is having a small tea shop in the village which does not yield any income to maintain the petitioner himself. The petitioner is aged 67 years diabetic patient and with other age



related ailments. He further submitted that without issuing distraint warrant, distress warrant issued curtailing the petitioner's liberty.

5.In support of his submission, the learned counsel for the petitioner relied on the following decisions:

- Shahada Khatoon and others Versus Amjad Ali and Others reported in 1999 AIR SCW 4880.
- S.T.Prabhakar Versus Secretary to Government, Home Department reported in 2011 CTC 1 355.
- Jayachandraan Versus Manjula reported in 2014 L.W. Crl. (1) 224.

6.In reply, the learned counsel for the respondents submitted that the marriage between the petitioner and the respondent and the 2nd respondent daughter born to them not in dispute. The 2nd respondent is still a minor. The petitioner and the 1st respondent married on 17.11.1996 and on 17.10.1997, the 2nd respondent was born to them. Right from the date of the marriage, the petitioner being an alcoholic and used to hit the 1st respondent for no reason. The jewels and other articles presented to her during marriage all were pledged by the petitioner. The petitioner owns a house, tea shop and agricultural lands having sufficient income. The petitioner used to live a



wayard life and spent all his earnings for himself neglecting the respondents.

Whenever the 1st respondent questioned the same, she was beaten physically.

Despite several family panchayat, the petitioner neither shown any remorse nor taken care of the respondents. The respondents are now at the mercy of her parents and relatives. With great difficulty, she able to provide education to the 2nd respondent, who is now a college going student. The petitioner is having properties and having income, despite the same, he negated monthly maintenance. The lower Court, by order, dated 09.04.2015 directed the petitioner to pay the maintenance, but the petitioner failed to obey and pay any maintenance. Thereafter, she filed a petition under Section 128 Cr.P.C., in C.M.P.No.2065 of 2015. After eight long years, finally on 03.02.2023 after giving sufficient time and finding that the petitioner wantonly evaded to make payment and obey the orders of the Court, the lower Court issued NBW against the petitioner and the petitioner was produced before the lower Court and after hearing the petitioner, finding that the petitioner failed to make the payment for forty months from 27.02.2012 to 31.05.2015, the lower Court *vide* impugned order, dated 23.06.2023 convicted and sentenced as stated above. It is also observed that if the petitioner is inclined to obey the order of the lower Court, he should



pay the amount of Rs.1,10,000/- and immediately thereafter, he will be set out free.

7.The learned counsel further submitted that the petitioner's contention before this Court as though the order passed under Section 125(3) Cr.P.C., is not proper, the impugned order is passed under Section 128 Cr.P.C.

8.Considering the submissions and on perusal of the materials, it is seen that the primary contention of the learned counsel for the petitioner is that the lower Court passed the impugned order under Section 125 Cr.P.C., hence, the same is not sustainable and not proper. On perusal of the petition filed before the lower Court by the respondents and the impugned order, it is clear that the petition has been filed under Section 128 Cr.P.C., and the order passed under the said Section.

9.The Hon'ble Apex Court in the case of “*Shantha alias Ushadevi and another Vs. B.G.Shivananjappa* reported in (2005) 4 SCC 468” following the same in the case of “*Poongodi and another Versus*



Thangavel reported in **(2013) 10 SCC 618**” clearly held that the liability to pay maintenance under Section 125 Cr.P.C., is in the nature of continuous liability and also held that the first proviso Section 125 Cr.P.C., did not extinguish or limit the entitlement of wife and children to the maintenance granted by the trial Court. The liability to pay the maintenance is a continued liability and the provisions of both under Sections 125(3) Cr.P.C., and 128 of Cr.P.C., to be construed towards the welfare and benefit of the wife and daughter. The relevant portion is as follows:

“It must be borne in mind that Section 125 Cr.P.C., is a measure of social legislative and it has to be construed liberally for the welfare and benefit of the wife and daughter. It is unreasonable to insist on filing successive applications when the liability to pay the maintenance as per the order passed under Section 125(1) is a continuing liability.”

10. In view of the above, this Court finds that the liability to pay the maintenance for the welfare and benefit of the wife and daughter is a continuing liability. The decisions relied on by the learned counsel for the petitioner is not applicable to the facts of the present case.



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11.In the light of the above discussion, this Court is not inclined to interfere with the impugned order, dated 23.06.2023 passed by the learned District Munsif cum Judicial Magistrate, Kodumudi and the same is hereby confirmed.

12.Accordingly, this Criminal Revision Case stands dismissed. Consequently, the connected Miscellaneous Petition is closed.

.02.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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M.NIRMAL KUMAR, J.

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To

The District Munsif-cum-Judicial Magistrate,
Kodumudi.

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