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C.R.P.(PD)No.5053 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.5053 of 2024 and
C.M.P.No.28346 of 2024

Mr.Ajeesh Kumar .. Petitioner

Versus

Mrs.Shailaja .. Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, set aside the Order passed by the IIIrd Additional Family Court Judge at Chennai in I.A.No.2 of 2024 in O.P.No.2165 of 2020 and stay the proceedings until such dismissal.

For Petitioner : Mr.Ajay Francis Inigo Loyola

For Respondent : Mr.Rahul Jagannathan

ORDER

This Civil Revision Petition challenges the order of the learned III Additional Family Court Judge at Chennai in I.A.No.2 of 2024 in O.P.No.2165 of 2020 dated 10.09.2024.



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2. The civil revision petitioner is the husband. He solemnized his wedding with the sole respondent on 09.04.2005 in Kerala. From the wedlock, a child was born. Thereafter, due to disputes and differences, the parties have separated. The wife initiated O.P.No.2165 of 2020 invoking Section 13 (1)(ia) r/w. Section 25 of the Hindu Marriage Act, 1955, alleging various acts of cruelty. She also claimed a sum of Rs.5 crores as permanent alimony.

3. For the sake of convenience, the parties will be referred to as husband and wife.

4. Simultaneously, the wife initiated M.C.No.195 of 2021 invoking Section 125 of Criminal Procedure Code. Pending disposal of M.C.No.195 of 2021, she filed an interim application in M.P.No.731 of 2021. By an order dated 16.11.2022, the application was allowed. As the husband did not comply with the order, she presented M.P.No.225 of 2023. invoking Section 128 of Criminal Procedure Code. She claimed that the husband has not paid arrears of maintenance which had been fixed by the Court on 19.01.2022 and 18.02.2022. The learned III Additional Principal Family Court Judge allowed the application, on 24.07.2023, directing the husband to pay a sum of Rs.9,76,200/- .



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5. Challenging the same, the husband presented CrI.R.C.No.1707 of

2023. The said revision came to be dismissed on 31.01.2024.

6. The husband also filed M.P.No.114 of 2023 in M.P.No.731 of 2021 in M.C.No.195 of 2021 invoking Section 127 of the Criminal Procedure Code. According to him, the wife's conduct disabled her from receiving any maintenance. He alleged that the wife married another person during the currency of their matrimony on 22.08.2021. Therefore, he pleaded the wife at best is entitled to maintenance from 19.04.2021 to 22.08.2021. This petition came to be dismissed on 21.07.2023. Challenging the same, the husband presented criminal revision before this Court in Cr.R.C.No.1709 of 2023. That too came to be dismissed on 31.01.2024. Challenging the order fixing the maintenance in Cr.M.P.No.731 of 2021, the husband filed a revision before this Court in CrI.R.C.No.1854 of 2024. This Court did not agree with the submissions of the husband and dismissed the criminal revision directing the husband to pay interim maintenance fixed by the Court on 04.11.2024. However, gave an observation that in case the Family Court comes to the conclusion that, the wife is not entitled to maintenance, the maintenance that has been paid to the wife should be adjusted against the maintenance payable to the child. In fine, the amount of maintenance that had been fixed by the



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Court in Crl.M.P.No.731 of 2021 at the rate of Rs.30,000/- for the wife and Rs.15,000/-, for the child, pending disposal of maintenance petition, attained finality. I am referring to these proceedings in order to show that the attempts made by the husband to have the order of maintenance modified, have failed. The liability of the husband to pay a sum of Rs.45,000/- to his wife and child continues month on month.

7. As the arrears had not been paid, the wife filed an application in I.A.No.2 of 2024 to strike off the defense of the husband in O.P.No.2165 of 2020. She calculated the arrears payable by the husband to her and the child at Rs.9,95,000/-. According to her, ample opportunities had been given to the husband to clear the arrears fixed in the M.C. Proceedings and as the husband had not discharged his liability, he is not entitled for an opportunity to contest the proceedings. This application was numbered as I.A.No.2 of 2024. Notice was ordered to the husband. He also filed a detailed counter.

8. According to him, he is entitled to due process of law of filing a counter for allegedly frivolous petition filed by the wife and that the strike off application itself had been filed to mislead the Court, to evade the trial, and in one manner or the other avoid the case reaching its legal conclusion.



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During the course of the proceedings, the husband had pleaded that he had taken medical insurance for the child and he is paying amounts in Sukanya Samrithi scheme.

9.The learned Trial Judge after considering the plea of the parties, came to a conclusion that the husband liability is to the tune of Rs.10,43,000/- and directed that in case the amount is not cleared by 21.10.2024, his defense would be struck off. Aggrieved by the same, the husband is on revision before me.

10.I heard Mr.Ajay Francis Inigo Loyola for the civil revision petitioner. The respondent/wife is on caveat through Mr. Rahul Jagannathan.

11. Mr.Ajay Francis Loyola's submissions are threefold. According to him, the power to strike off a defense in civil proceeding is available only under Order VI Rule 16, and that unless and until the application satisfies the requirements of Order VI Rule 16, the Court ought not to have allow the application to strike off. His 2nd plea is that when a remedy is available to the wife to initiate proceedings under Criminal Procedure Code, to enforce the order of interim maintenance, she is not entitled to file an application invoking



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Section 151 of the Code of Civil Procedure. Finally, he points out that defense of striking off should be sparingly used with lot of circumspection and the learned Trial Judge has not adverted to this position and had allowed the application for the asking. He relies upon the following Judgments of Supreme Court as well as of the Kerala High Court:

- (i) *Abdul Razak (D) Through L.R.s, & Ors Vs. Mangesh Rajaram Wagle and others, (2010) SCC online SC 138.***
- (ii) *My Palace Mutually Aided Co-operative Society Vs. B. Mahesh & Ors, 2022 SCC online SC 1063.***
- (iii) *Rajnesh Vs. Neha & Anr. , 2020 SCC online SC 903***
- (iv) *Hari B. Vs. Harsha S., 2021 SCC Online Ker. 406***

to press home his submissions.

12. He points out the wife had challenged the order passed in Cr.R.C.No.1854 of 2024 before the Supreme Court in SLP. (CrI) Nos. 16201 and 16202 of 2024 and the same were withdrawn on 25.11.2024. A serious error had been committed by the learned Trial Judge, in striking off his defense for non payment of arrears, it requires to be revised.

13. I have carefully considered the submissions of Mr. Francis Loyola. It



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is too well settled, but I have to reiterate for the purpose of this case, that the purpose of granting maintenance to a wife by her husband, either under Section 125 of the Criminal Procedure Code or under the appropriate matrimonial legislations is to prevent vagrancy of the wife and the child. The amount fixed by the court is to enable the wife to withstand the litigation launched by the husband or to sustain herself, pending disposal of the proceedings initiated by her seeking divorce.

14. Insofar as this case is concerned, there is no dispute with regard to relationship between the parties or to the fact that, in CrI.M.P.No.731 of 2021 in M.C.No.195 of 2021, the Family Court had ordered the husband to pay, a sum of Rs.30,000/- to the wife and Rs.15,000/- to the child, per month towards their maintenance. The attempt of the husband to get rid of the order has failed on account of the dismissal of the petitions before the Family Court. The challenge before this Court also failed. The liability of the husband having attained finality, despite plea of Mr.Francis Loyloa that I have to modify the order, cannot be entertained by this Court. He had filed an application to modify the order of maintenance and that too, has failed. He has not challenged the orders of this Court in all the three Criminal Revisions before the Supreme Court. Therefore, the plea that the order should be



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modified, taking into consideration, the fact that the wife is having association with another person does not answer the requirements of law. I should point out here that the very same pleas have been raised for consideration before Hon'ble Mr. Justice Nirmal Kumar and the learned Judge rejected the plea.

15. The order of maintenance having become final, an option is given to the wife either to invoke the provisions of Criminal Procedure Code and move an application to strike off the defence before the Family Court. From the records, it is clear that she had invoked Section 128 of Cr.P.C, She succeeded. Yet, the husband did not pay. The husband challenged the same before the High Court. He lost, yet he did not pay. Being left with no other option, she filed an application under Section 151 to Strike-off the defense.

16. The maintainability of the petition by the wife is in question. Turning to the position of law laid down by the Supreme Court in ***Rajnesh Vs. Neha & Anr. , 2020 SCC online SC 903***, I have to point out that this very specific plea regarding striking off the defense had been raised before the Supreme Court. The Supreme Court confirmed the view of Punjab and Haryana High Court, which had held that law is not powerless to bring the husband to the book and if the order of maintenance and litigation expenses



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are not obeyed. The Court held that a Trial Court can retain in itself the power to strike off the defense.

17.The Supreme Court did not differentiate between maintenance ordered under Cr.P.C. or the matrimonial laws. This is because it matters is not to the wife, whether she had obtained orders in any of the legislations as long as her entitlement is confirmed. In case there were multiple orders of maintenance, the Supreme Court in ***Rajnesh Vs. Neha & Anr. , 2020 SCC online SC 903***, also makes it very clear that the liability of the husband passed under one order can always be adjusted by the Court passing an other order subsequently. The ratio that I am able to derive from this Judgment is that irrespective of the provisions under which maintenance had been ordered, the husband owes liability to discharge the same. In case, he does not discharge his duty, the Court has the power to strike off the defense.

18.At this stage, I have to refer to the submission of Mr.Loyola that Supreme Court in ***My Palace Mutually Aided Co-operative Society Vs. B.Mahesh & Ors, 2022 SCC online SC 1063*** had held that an application under Section 151 cannot be resorted to when there is specific provision under law. The Supreme Court had referred to earlier Judgment of the very same



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Court and had come to a conclusion that when there is a specific provision in the Code, then resort to Section 151 should not be made. I should point out here that the aforesaid judgment did not arise out of matrimonial proceeding.

19.As pointed out in ***Rajnish Vs. Neha & Anr. , 2020 SCC online SC 903,*** under Section 151, a Court has power to strike off the defense of the husband, in case of default of payment of maintenance by the husband.

20.Anticipating this difficulty, Mr.Loyola relies upon the Judgment of ***Abdul Razak (D) Through L.R.s, & Ors Vs.Mangesh Rajaram Wagle and others, (2010) SCC online SC 138*** , to argue that under Order VI Rule 16, there are three specific grounds on which the defense can be struck off and non payment of maintenance is not one of these grounds. Therefore, he argues a petition under Section 151 is not maintainable.

21.I have to point out under Order VI Rule 16(c), in case the attempt by a party amounts to abuse of a process of Court, then the Court always has the power to strike off the defense.

22. The reluctant attitude of the husband that he will not pay



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maintenance, despite having challenged the same before the Trial Court as well as before this Court on two occasions, in my view amounts to abuse of process of Court. The husband cannot shirk his liabilities and seek protection of law when he himself has not obeyed the order of this Court. It is the duty of a party to implement the order of the Court. It is open to the husband to challenge the order which was passed against him. In this case he did challenge and he failed. Despite his failure, the stand of the husband that he will continue to violate the order, as the wife is not entitled to invoke the powers of this Court and seek for striking off the defense is untenable.

23.The last Judgment which Mr.Loyola relied upon in ***Hari B. Vs. Harsha S., 2021 SCC Online Ker. 406,*** instead of going in his favour, in my reading goes against him. In the facts of that case, a learned Single Judge of Kerala High Court had held that while the Family Court has the power to strike off the defense in the civil proceedings, it does not have similar power to strike off the defense in criminal proceedings. Before coming to this conclusion, in Paragraph no. 22 of the said Judgment, the learned Judge records that a Family Court, in proceedings of which are civil in nature, is entitled to invoke power to strike off the defense when there is a wilful default by the husband to comply with the directions to pay maintenance. I would



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therefore apply the dictum that has been laid by the learned single Judge to the facts of the case. There is a direction to pay the maintenance and the husband has not paid it. Therefore, he has to suffer consequences of his act. In my view, the learned Trial Judge has appreciated correct position of law and applied it to the facts before her. I do not find any plausible reason to differ the view taken by her.

24. In the above discussion, this civil revision petition is dismissed. The time given by the Trial Court is extended till **20.01.2025**. For the fact that I have extended the time, does not mean that the liability of the husband has come to an end. When he pays the arrears in January 2025, (in case if he does so), he would have to pay the maintenance amount till January 2025. He would have to pay the entire amount of default including the period from the date of the order till January 2025.

25. In case the arrears of maintenance is cleared till Jan 2025, the defense of the husband will stand restored. The Court will also ensure that the husband, before he contests the main proceedings, clears the arrears month on month. Even if there is a month's default, the Court will exercise the power to strike off *suo motu* and proceed further in accordance with law.



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The learned trial Judge is requested to defer the proceedings, till 21.01.2025, to enable the husband to clear the arrears. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes/No
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To

The III rd Additional Family Court Judge
Chennai



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LAKSHMINARAYANAN, J

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