



Crl.O.P.(MD).No.19353 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	16.02.2024
Pronounced On	:	15.07.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.O.P(MD).No.19353 of 2019

and

Crl.M.P(MD). Nos.11356 and 11358 of 2019

TAM.Abdul Jaffar

... Petitioner/2nd Respondent

Vs.

Sakilabanu

... Respondent/Petitioner

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in M.C.No.06 of 2019 on the file of the District Munsif cum Judicial Magistrate, Thiruppathur and quash the proceedings initiated as against the Petitioner herein.

For Petitioner : Mr.A.Arul Jenifer
for M/s.KBS Law Office

For Respondents : Mr.P.Venkata Subramanian



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ORDER

The father-in-law of the first respondent filed this petition to quash the proceedings initiated by the respondent against him and his son under Section 125 of Cr.P.C in M.C.No.06 of 2019 on the file of learned District Munsif cum Judicial Magistrate, Tirupathur.

2.The respondent married the first respondent in the M.C.No.06 of 2019 on 04.02.2016. At the time of the marriage, he was working in Saudi Arabia in Riyadh City. He came to India on leave for 45 days for marrying the respondent. After the marriage, he left the respondent in the matrimonial home and in the matrimonial home, she suffered domestic violence at the instance of the father-in-law, mother-in-law and the sister-in-law. Therefore, the father-in-law, in the month of 2016, driven her out from the matrimonial home. Thereafter, the respondent was unable to contact the first respondent, namely son of the second respondent. Hence, she was unable to maintain herself. In the said circumstances, she filed the maintenance claim petition. That being the situation, the first respondent filed a suit in O.S No.19 of 2018 seeking divorce against the petitioner and the same was ordered *ex-parte*. In the said circumstances, she



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claimed maintenance against the father-in-law and her husband. In the maintenance petition, she averred that she was unable to get the address of her husband and the second respondent namely, father-in-law, is continuously receiving the monthly payment from her husband through his account and hence, he is added as a party to pay the maintenance.

2.1.The father-in-law has filed this quash petition before this court to quash the said maintenance claim petition against him on the ground that he is not bound to pay the maintenance under 125 CRPC. Under 125 CRPC, the maintenance petition is maintainable only against her husband. Therefore, the petition filed against the father-in-law is not maintainable. Hence, he seeks for quashing the MC proceeding as against him.

3.The learned counsel for the Wife submitted that before marriage, her husband was working in the Riyadh City in Saudi Arabia. After marriage, he left India. Within 45 days, she was driven out of the matrimonial home. The husband/respondent filed a suit through his father as a power of attorney seeking divorce and had obtained *ex-parte* divorce and the petitioner is intentionally refusing to share her husband's place of residence in Saudi Arabia. He is



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receiving the salary of her husband. Therefore, in the peculiar circumstance of the case, he was added as party. After the marriage, she is not in a position to find out the address of her husband. Further, in all the proceedings, the father-in-law acted as a power of attorney of her husband. Even the suit was filed in the Munsif court, through her father-in-law as the power of attorney. Hence, in the peculiar circumstance of the case, she filed the maintenance claim against the father-in-law impleading him and seeking the maintenance through him. She further averred that he is continuously receiving amounts from her husband every month and hence he also acted as a trustee of her husband. Hence, he is duty bound to pay the maintenance amount received from his son. He only arranged the marriage of his son. Hence, he is duty bound to maintain her. Therefore, she seeks dismissal of this case.

4.This Court considered the rival submission made on either side and also perused the mateirila.

5.This Court, at the outset, before going to the issues, extracted the provision of the 125 Cr.P.C.



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6.From the reading of the 125 CRPC proceedings, it is clear that the language of the 125 CRPC is that it is maintainable only against the husband. Nowadays, all the husband, after entering into marriage, leave the wife in the matrimonial home, picking up quarrel with the wife. This case, is not an exception. The wife was unable to find out the address of the husband. Further, all the proceedings are being represented through his father, namely the petitioner herein. Further, she has stated father in law is receiving salary amount from her husband and he is duty bound to provide maintenance on behalf of the husband. He is in possession of the money received, paid by her husband. Hence, he is duty bound to provide maintenance from amount received from her husband.

7.Before marriage, the petitioner's son was working in the Riyadh City, Saudi Arabia. The petitioner only arranged the marriage of the respondent with his son. He only arranged the marriage. Hence, it is his duty to give parental care to her by accommodating her in his house namely Matrimonial home. The petitioner's son married this innocent respondent and left with custody of the petitioner to protect her. But, the petitioner has driven the respondent from the



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matrimonial home. There is serious allegation of Domestic Violence against the petitioner and his family members. The petitioner filed the divorce petition against the respondent by acting as power of attorney in O.S.No.19 of 2018. He alone represented in the suit and clandestinely obtained exparte divorce. Now, there is positive averment in the petition that he is receiving the salary of his son.

8.The husband after entering marriage, instead of taking the respondent to his workplace and leading married life, left the respondent in the custody of his father. He filed divorce petition against her through his father in the capacity of power of attorney and obtained exparte divorce decree. Now, he is hiding and leading a cushy life by leaving the respondent in lurch. Therefore, he is a fraudster. Matrimonial fraud has been committed by him. Therefore, Section 125 of Cr.P.C., should be so interpreted to avoid unworkable or impracticable results. The said principle was fortified in the case of ***Sheffield City Council vs. Yorkshire Water Services Ltd.***, reported in ***(1991) 1 WLR 58 : (1991) 2 All ER 280]***, ***WLR at page No.71***, and held as follows:

“Parliament is taken not to intend the carrying out of its enactments to be unworkable or impracticable, so the court will be slow to find in favour of a construction that leads to these consequences. This follows the path taken



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by judges in developing the common law. ‘... the common law of England has not always developed on strictly logical lines, and where the logic leads down a path that is beset with practical difficulties the courts have not been frightened to turn aside and seek the pragmatic solution that will best serve the needs of society’.”

8.1. The Hon'ble three Judges Bench of Supreme Court reiterated the said principle by interpreting Section 50 of the NDPS Act in the case of the ***State of H.P. v. Pawan Kumar***, reported in **(2005) 4 SCC 350 at page 363**

18.... A statute should be so interpreted as to avoid unworkable or impracticable results. In Statutory Interpretation by Francis Bennion (3rd Edn.), para 313, the principle has been stated in the following manner:

“The court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament. Sometimes, however, there are overriding reasons for applying such a construction, for example where it appears that Parliament really intended it or the literal meaning is too strong.”



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8.2. *Manu imposes moral obligation to pay maintenance in the following words:*

The aged parents, a virtuous wife and an infant child must be maintained even by doing a hundred mis-deed.”

8.3. But, there is no Unified Hindu code creating obligation to pay monthly maintenance to the wife, children and aged parents. Similarly, no such provision is there in muslim law also.

8.4. There was a total failure of fulfilment of moral obligation to pay maintenance to women and children in the helpless stage of distress, vagrancy, and starvation during British period. So, Sir James Fitz Stephen, being a legal member of the viceroy's Council acted as a precursor to bring the maintenance provision in the Code of Criminal Procedure, 1872. Infact, in the opinion of this Court, he was the first reformer of women folk and raised his voice for the welfare of the voiceless women and children and acted as an instrument to incorporate maintenance provision with distress and distraint warrant procedure of execution. Thus, for the first time, a summary legal process was introduced to enforce moral obligation for payment of monthly maintenance in the Code of Criminal Procedure, 1872 and the same was incorporated in the Code of



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Criminal Procedure, 1898 and subsequently in the Code of Criminal Procedure, 1972.

8.5. Maintenance(meaning) (P.Ramanatha Aiyar's Advanced Law Lexicon 5th Edition):

“Maintenance also means of subsistence, supply of necessities and convenience; aid, support, assistance; the support which one person who is bound by law to do so, gives to another for his living”

8.5(a).The Hon'ble Supreme Court in the following various pronouncements stated the object of the maintenance and also has applied the principle of purposive interpretation while construing Section 125 of Cr.P.C.

8.5.(b). Bhagwan Dutt v. Kamla Devi (1975) 2 SCC 386:

“Their object is to compel a man to perform the moral obligation which he owes to society in respect of his wife and children. By providing a simple, speedy but limited relief, they seek to ensure that the neglected wife and children are not left beggared and destituted on the scrap-heap of society and thereby driven to a life of vagrancy, immorality and crime for their subsistence. ...The jurisdiction conferred by the section on the Magistrate is more in the nature of a preventive, rather than a remedial jurisdiction; it is certainly not punitive.”



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8.5.(c). Dukhtar Jahan v. Mohd. Farooq - (1987) 1 SCC 624:

16. & Proceedings under Section 125 [of the Code], it must be remembered, are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner.”

8.5.(d). Vimala (K.) v. Veeraswamy (K.) [(1991) 2 SCC 375:

3. “Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing, and shelter to the deserted wife.”

8.5.(e). Kirtikant D. Vadodaria v. State of Gujarat (1996) 4 SCC 479:

15. “... While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is



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that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.”

8.5.(f). Savitri v. Govind Singh Rawat, (1985) 4 SCC 337 :

4. A reading of the above provisions shows that they are intended to provide for a preventive remedy for securing payment of maintenance which can be granted quickly and in deserving cases with effect from the date of the application itself.

5. The jurisdiction of a Magistrate under Chapter IX of the Code is not strictly a criminal jurisdiction. While passing an order under that Chapter asking a person to pay maintenance to his wife, child or parent, as the case may be, the Magistrate is not imposing any punishment on such person for a crime committed by him.

The Code, however, provides a quick remedy to protect the applicant against starvation and to tide over immediate difficulties. Chapter IX of the Code does not in reality create any serious new obligation unknown to Indian social life.

6. It is the duty of the court to interpret the provisions in Chapter IX of the Code in such a way that the construction placed on them would not defeat the very object of the legislation.

27. We have said and it needs to be said again, that Section 488 is intended to serve a social purpose. It



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provides a machinery for summary enforcement of the moral obligations of a man towards his wife and children so that they may not, out of sheer destitution become a hazard to the well-being of orderly society.

8.5.(g). *Danial Latifi v. Union of India*, (2001) 7 SCC 740:

“20. It is a small solace to say that such a woman should be compensated in terms of money towards her livelihood and such a relief which partakes basic human rights to secure gender and social justice is universally recognised by persons belonging to all religions”

8.5.(h). *Shamima Farooqui v. Shahid Khan*, (2015) 5 SCC 705 :

13. When the aforesaid anguish was expressed, the predicament was not expected to be removed with any kind of magic. However, the fact remains, these litigations can really corrode the human relationship not only today but will also have the impact for years to come and has the potentiality to take a toll on the society. It occurs either due to the uncontrolled design of the parties or the lethargy and apathy shown by the Judges who man the Family Courts. As far as the first aspect is concerned, it is the duty of the courts to curtail them. There need not be hurry but procrastination should not be manifest, reflecting the attitude of the court. As regards the second facet, it is the duty of the court to have the complete control over the proceeding and not permit the lis to swim the unpredictable grand river of time without knowing when shall it land on



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the shores or take shelter in a corner tree that stands “still” on some unknown bank of the river. It cannot allow it to sing the song of the brook. “Men may come and men may go, but I go on forever.” This would be the greatest tragedy that can happen to the adjudicating system which is required to deal with most sensitive matters between the man and wife or other family members relating to matrimonial and domestic affairs. There has to be a proactive approach in this regard and the said approach should be instilled in the Family Court Judges by the Judicial Academies functioning under the High Courts. For the present, we say no more.

14..... It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home. The statute commands that there have to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would



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have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar.

19. From the aforesaid enunciation of law it is limpid that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes her faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance allowance.”

8.5.(i). Anju Garg and Ors.V. Deepak Kumar Garg, 2022 SCC OnLine SC 1314:

“9. At the outset, it may be noted that Section 125 of Cr.P.C. was conceived to ameliorate the agony, anguish and



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financial suffering of a woman who is required to leave the matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children.”

8.5.(j). Kuldip Kaur v. Surinder singh (1989) 1 SCC 405:

5. Now, one of the modes for enforcing the order of maintenance allowance with a view to effect recovery thereof is to impose a sentence of jail on the person liable to pay the monthly allowances.

6. A distinction has to be drawn between a mode of enforcing recovery on the one hand and effecting actual recovery of the amount of monthly allowance which has fallen in arrears on the other. Sentencing a person to jail is a “mode of enforcement”. It is not a “mode of satisfaction” of the liability. The liability can be satisfied only by making actual payment of the arrears. The whole purpose of sending to jail is to oblige a person liable to pay the monthly allowance who refuses to comply with the order without sufficient cause, to obey the order and to make the payment. Sentencing to jail is the means for achieving the end of enforcing the order by recovering the amount of arrears. It is not a mode of discharging liability.

8.5.(k). Poongodi v. Thangavel, (2013) 10 SCC 618 :

“Criminal Procedure Code, 1973 — S. 125(3) and first



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proviso thereto — Time-limit under said first proviso for invoking S. 125(3) — Whether creates any bar or affects right to claim arrears of maintenance — Mode of enforcement of payment of maintenance distinguished from entitlement to payment of maintenance.

Held, said first proviso to S.125(3) does not extinguish or limit entitlement to arrears of maintenance — This proviso lays down procedure for recovery of maintenance by construing maintenance to be a levy of fine — In case of default in payment of maintenance, claimant cannot seek detention of defaulter in custody if application therefor is not moved within one year from due date.”

From the above march of law, the Hon'ble Supreme Court has not only given purposive interpretation to the provision under Section 125 of Cr.P.C., and also interpreted the provision in meet out the situation. The Hon'ble Supreme Court also reiterated the principle that law is never static and organic interpretation will be provided to meet the situational demand. Further, the provision of maintenance is incorporated under Section 125 of Cr.P.C., to meet out the constitutional obligation of the social justice and the same requires organic interpretation to meet out the emergent situation.



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9. Therefore, considering the tragic tale of Indian Muslim woman where the Muslim husband after entering marriage left her in lurch in India and living a lavish life in the foreign country, and she is unable to find out the address for even claiming maintenance for herself and her child, this Court to achieve social justice enshrined the constitution of India and to prevent vagrancy and destitution which is object behind 125 Cr.P.C., inclines to give the purposive interpretation to the word “husband” in Section 125 of Cr.P.C., in such a way

10. The word “husband” includes who are in the custody of the asset of the husband in the case love marriage and Father-in-law and Mother-in-law case of arranged marriage. The assets may either be in the form of receipt of the salary or any other amount from the husband or income from the assets of the husband.

11. It is true that the petition is maintainable against the husband only but, now a days, considering the development of law that the husband intentionally hide their residence and have contacts only with his parents, this Court interpreted the provision of Section 125 of Cr.P.C., against the husband, that maintenance can be claimed from the persons including who are in the custody of the monetary assets of the husband. The husband is bound to pay the



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maintenance. But in the case of this nature if any of the family members of the husband received the salary of the husband, they are bound to pay the maintenance amount. In the peculiar circumstance of the case, the Court declines to accept the technical plea of the petitioner seeking to a quash the case by taking shelter under Section 125 of Cr.P.C., that claim against father-in-law has not been provided in the said provision. When father-in-law has acted as power agent in other proceedings and regularly getting monthly payment, this technical plea can not be accepted. Hence, the said plea is rejected in the peculiar circumstances of this case.

12. Accordingly, this criminal original petition is dismissed. Consequently, the connected criminal miscellaneous petitions are closed.

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NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To
The District Munsif cum Judicial Magistrate,
Thiruppathur.



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K.K.RAMAKRISHNAN, J.

vsg

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