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Crl.R.C.No.1407 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.03.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1407 of 2024
and
Crl.M.P.No.11875 of 2024

Balasubramanian, S/o Chellamuthu

.. Petitioner

Vs.

Dr.Sujatha, W/o Balasubramanian

.. Respondent

Criminal Revision Case is filed under Section 401 Cr.P.C. against the order dated 28.06.2024 passed in M.C.No.12 of 2019 on the file of the Judicial Magistrate, Thittakudi.

For petitioner : Mr.R.Ezhilarasan

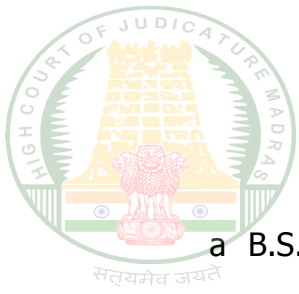
For respondent: No appearance

ORDER

Despite service of notice effected on the respondent and a counsel also entered appearance, there is no representation for her. This Court perused the papers and heard the learned counsel for the petitioner.

2. Learned counsel for the petitioner submitted that the respondent/wife is

Page No.1/8



CrI.R.C.No.1407 of 2024

a B.S.M.S. graduate in Siddha Medicine. She is doing private practice in the said Siddha field and she has not filed any statement of assets and liability and had suppressed the material fact as if she is not able to maintain herself. The Family Court filed to consider the qualification of the respondent before ordering the maintenance, which is against the provisions of Section 125 Cr.P.C. In this regard, it is useful to quote Section 125 Cr.P.C., which is as follows:

"Section 125: Order for maintenance of wives, children and parents: (1) If any person having sufficient means neglects or refuses to maintain --

- (a) his wife, unable to maintain herself, or
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
- (d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:



WEB COPY



CrI.R.C.No.1407 of 2024

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct.

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.] *[Inserted by Act 50 of 2001, Section 2 (w.e.f. 24-9-2001).]*

Explanation -- For the purposes of this Chapter,-- (a)"minor" means a person who, under the provisions of the Indian Majority Act, 1875 ([9 of 1875](#)) is deemed not to have attained his majority, (b) "wife" includes a woman who has been divorced by, or has



WEB COPY



CrI.R.C.No.1407 of 2024

obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be. *[Substituted by Act 50 of 2001, Section 2 (w.e.f. 24-9-2001).]*

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made :

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to



WEB COPY



CrI.R.C.No.1407 of 2024

maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation -- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."



CrI.R.C.No.1407 of 2024

WEB COPY

3. The ingredients of Section 125 Cr.P.C. are clear that if the wife is unable to maintain herself and if the husband is well-off and able to maintain her, she can seek maintenance from her husband, whereas, in this case, the respondent is also equally qualified person to that of the petitioner and she is doing practice in Siddha medicine having been qualified with B.S.M.S (Siddha Medicine) and she has suppressed the real practice of Siddha medicine and she has not even produced any material to prove her avocation, the impugned order passed by the Family Court is liable to be set aside.

4. During cross-examination, the respondent-wife herself admitted that she is a B.S.M.S. (Siddha Medicine) graduate and she was doing practice before marriage. Therefore, considering the fact that the respondent-wife is a fully equally qualified person to that of the revision petitioner-husband, and even though the petitioner has not produced any material to disqualify from receiving the maintenance by wife, and that she is having any sufficient means to maintain herself, but the scope of Section 125 Cr.P.C. is clear that if a women/wife/children/parents, is/are unable to maintain themselves, they can get the necessary maintenance from the abled person.

5. In this case, the Family Court failed to consider the scope and object of



Crl.R.C.No.1407 of 2024

Section 125 Cr.P.C and ordered payment of maintenance and therefore, the impugned order passed by the Judicial Magistrate is set aside. The respondent/wife is at liberty to work out her remedy before the competent Civil Court and she is not entitled to get maintenance under Section 125 Cr.P.C.

6. With the above observations, this revision petition filed by the husband, is allowed. The Miscellaneous Petition is closed.

26.03.2025

CS

To

1. The Judicial Magistrate, Thittakudi.
2. The Section Officer, Criminal Sections - Records, High Court, Madras.

Page No.7/8



WEB COPY



Crl.R.C.No.1407 of 2024

P.VELMURUGAN, J

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Crl.R.C.No.1407 of 2024

26.03.2025

Page No.8/8