



Crl.RC.No.1775 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.07.2025

PRONOUNCED ON : 07.08.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.1775 of 2024

M.Moshin Khan

... Petitioner

Versus

1. Sharmila Banu
2. Minor M.Amirah Gulshan
3. Minor Amid Muhammad
(Minor children are rep. by
their natural guardian and
mother Sharmila Banu-R1)

... Respondents

PRAYER: Criminal Revision has been filed under Sections 438 r/w 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying to set aside the order dated 20.09.2024 passed in M.P.No.840 of 2023 in M.P.No.281 of 2018 in M.C.No.154 of 2017 on the file of the VI Additional Family Court Judge, Chennai.

For Petitioner : Mr.M.Mohamed Riyaz

For Respondents : Mr.G.R.Hari



Crl.RC.No.1775 of 2024

WEB COPY

ORDER

This Criminal Revision Case has been preferred against the order dated 20.09.2024 passed by learned VI Additional Judge, Family Court, Chennai, in M.P.No.840 of 2023 in M.P.No.281 of 2018 in M.C.No.154 of 2017, ordered to return of articles being 89 grams of jewellery and a sum of Rs.8,50,000/-.

2. The petitioner is the husband and the first respondent is his wife. After their marriage, they gave birth to the respondents 2 & 3 herein. Due to misunderstanding between them, they got separated and as such the respondents were driven out from the matrimonial home. Therefore, they could not maintain themselves and filed maintenance case in M.C.No.154 of 2017. While pending the maintenance case, the respondents also filed petition in M.P.No.281 of 2018 for return of all their belongings such as cash and gold items presented during the marriage to the petitioner in the presence of Jamathars as per the list of articles attached with that petition. The trial Court ordered both the petitions by separate orders dated 17.10.2019. The maintenance case was



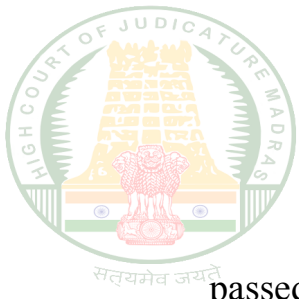
Crl.RC.No.1775 of 2024

WEB COPY

awarded with the monthly maintenance of Rs.15,000/-in favour of the first respondent and a sum of Rs.5,000/- each to the respondents 2 & 3 herein. On the same day, the trial Court also ordered in M.P.No.281 of 2018, thereby directed the petitioner to return the properties as mentioned in the annexure within a period of three months.

3. Aggrieved by the order passed in M.C.No.154 of 2017, the petitioner preferred a revision in Crl.R.C.No.437 of 2020 and the same was also dismissed by this Court by an order dated 31.01.2023, by confirming the order passed by the trial Court. Likewise challenging the order passed in M.P.No.281 of 2018 in M.C.No.154 of 2017, the petitioner preferred another revision before this Court in Crl.R.C.No.433 of 2022 and this Court by an order dated 24.01.2023 dismissed the revision as infructuous for the reason that the main case viz., the maintenance case itself was disposed of on merits.

4. In pursuance to the dismissal of both the revisions, the respondents filed petition in M.P.No.840 of 2023 to execute the order

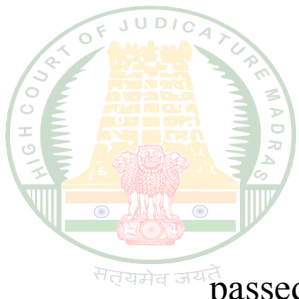


Crl.RC.No.1775 of 2024

WEB COPY

passed in M.P.No.821 of 2021 in M.C.No.154 of 2017. The respondents also filed another petition in M.P.No.839 of 2023 to execute the order passed in M.C.No.154 of 2017. Considering the execution petitions, the trial Court by an order dated 21.06.2024, allowed the petition in M.P.No.839 of 2023 and directed the petitioner to pay arrears of maintenance to the tune of Rs.14,38,000/- and also issued arrest warrant as against the petitioner. Likewise, the trial Court by an order dated 20.09.2024 allowed the petition in M.P.No.840 of 2023 and directed the petitioner to return the gold of 89 grams and cash to the tune of Rs.8,50,000/- and also issued non bailable warrant as against the petitioner. Aggrieved by the same, the present revision.

5. The learned counsel appearing for the petitioner submitted that the respondents filed maintenance case in M.C.No.154 of 2017. They also filed another petition in M.P.No.281 of 2018 for return of articles. Though both the petitions were ordered on the same day, when the main case itself in M.C.No.154 of 2017 was ordered, the order that was passed in miscellaneous petition shall be merged with the final order

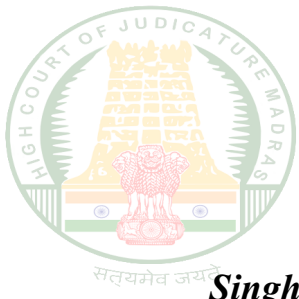


Crl.RC.No.1775 of 2024

WEB COPY

passed in M.C.No.154 of 2017. Therefore, no execution petition is maintainable to execute the order passed in M.P.No.281 of 2018. In fact, when the petitioner challenged the order passed in M.P.No.281 of 2018 in M.C.No.154 of 2017, before this Court in Crl.R.C.No.433 of 2020, this Court by an order dated 24.01.2023 dismissed the revision on the ground that the main case in M.C.No.154 of 2017 itself was disposed of on merits on 17.10.2019. Therefore, nothing would survive for further adjudication in the said revision. Hence, the respondents cannot file any execution petition to implement the order passed in M.P.No.281 of 2018, as it has been merged with the order passed in M.C.No.154 of 2017.

5.1. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India reported in **(2009) 11 SCC 479** in the case of ***Prem Chandra Agarwal and anr Vs. Uttar Pradesh Finacial Corporation and ors.***, which held that it is well settled principle that once a final order is passed, all the earlier interim orders shall merge into the final order and the interim orders cease to exist. He also relied upon another judgment reported in **(2012) 4 SCC 307** in the case of ***Kanwar***



Crl.RC.No.1775 of 2024

WEB COPY

Singh Saini Vs. High Court of Delhi, in which the Hon'ble Supreme Court of India held that once a suit is decreed, the interim order, if any, merges into the final order. No litigant can derive any benefits from mere pendency of case in a court of law, as the interim order always merges in the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically.

6. Per contra, the learned counsel appearing for the respondents submitted that though the respondents filed petition by way of interlocutory application in M.P.No.281 of 2018 in M.C.No.154 of 2017, it was filed for completely different relief to return the article and cash which were presented during the marriage on demand. Therefore, the trial Court passed two separate orders in M.P.No.281 of 2018 and M.C.No.154 of 2017 on 17.10.2019. The revision itself is not maintainable since the order passed in M.P.No.840 of 2023 is not interlocutory in nature.



Crl.RC.No.1775 of 2024

WEB COPY

6.1. He further submitted that under Section 125 of Cr.P.C., the respondents can file any number of petitions to seek arrears of maintenance and to implement the order passed in the maintenance case. Therefore, even after passing the final order under Section 125 Cr.P.C., in the main case, the trial Court does not become *functus officio*. As and when the occasion arises, the trial Court can exercise its jurisdiction from time to time.

6.2. In the case on hand, when the main case was pending in M.C.No.154 of 2017, the respondents filed petition in M.P.No.281 of 2014 for return of articles. Both can be filed under Section 125 of Cr.P.C., both petitions are filed for different relief, though M.P.No.281 of 2018 was filed as an interlocutory petition. Therefore, the trial Court rightly passed separate orders in both the miscellaneous petition as well as the main case. In fact, this Court dismissed both the revisions filed by the petitioner herein. In order to execute both the orders, the respondents filed execution petitions in M.P.Nos.839 of 2023 & 840 of 2023. Both were ordered and issued warrant as against the petitioner. Therefore, the



Crl.RC.No.1775 of 2024

WEB COPY

revision itself is not maintainable and is liable to be dismissed. In support of his contention, he relied upon the following judgments:-

(i) (2020) 13 SCC 172 – Sanjeev Kapoor Vs. Chandana Kapoor and ors

(ii) (2022) 3 Mad LJ (Cri) 411 - Bapuji Murugesan Vs. Mythili Rajagopalan.

7. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

8. On the submissions made by either side, the following points have arisen for consideration.

(i) Whether the revision is maintainable as against the order passed in M.P.No.840 of 2023 in M.P.No.281 of 2018 in M.C.No.157 of 2017?

(ii) Whether the order passed in M.P.No.281 of 2018 shall be merged with the order passed in M.C.No.157 of 2017?

(iii) Whether the order passed in M.P.No.281 of 2018 is an executable one?



Crl.RC.No.1775 of 2024

WEB COPY

9. The respondents filed petition for maintenance in M.C.No.154 of 2017 under Section 125 of Cr.P.C. While pending the same, they also filed another petition in M.P.No.281 of 2018 for return of articles under Sections 451 & 452 of Cr.P.C. Therefore, it was not an interlocutory application in the maintenance case. Though it was filed in the form of miscellaneous petition, it was filed for separate relief under Section Sections 451 & 452 of Cr.P.C., for return of articles which were presented during the marriage. Therefore, the trial Court rightly passed separate orders in M.P.No.281 of 2018 and in M.C.No.154 of 2017 on 17.10.2019.

10. In fact, the petitioner challenged both the orders separately by way of two revisions. If at all the order passed in M.P.No.281 of 2018 is merging with the order passed in M.C.No.154 of 2017, the petitioner ought not to have challenged both the orders by way of separate revisions. Both the revisions challenging both the orders were dismissed by this Court. Unfortunately, the fact that the petition in M.P.No.281 of



Crl.RC.No.1775 of 2024

WEB COPY

2018 for return of article was filed under Sections 451 & 452 of Cr.P.C., was not brought to the knowledge of this Court, while passing the order in Crl.R.C.No.433 of 2020, challenging the order passed in M.P.No.281 of 2018. Therefore, this Court dismissed the revision as infructuous since the order was passed in the main case itself in M.C.No.154 of 2017. Therefore, the order passed in M.P.No.281 of 2018 is not an interlocutory order to merge with the final order passed in M.C.No.154 of 2017.

11. In this regard, the learned counsel appearing for the respondents relied upon the judgment of this Court reported in **(2022) 3 Mad LJ (Cri) 411** in the case of **Bapuji Murugesan Vs. Mythili Rajagopalan**, with regard to the issues of whether the order impugned is an interlocutory order and whether any revision would lie as against the same. This Court by relying upon the judgment of the Hon'ble Supreme Court of India held as follows :-

“8.....The Hon'ble Supreme Court of India, in Madhu Limaye v. State of Maharashtra, considered the aspect in detail and after considering the



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Crl.RC.No.1775 of 2024

nature of the powers of revision of the High Court in paragraph No.8 and the fact that the revisional jurisdiction is being routinely invoked and only to put fetters on such unmindful and repeated approach to the High Courts, the embargo under sub-section (2) of 397 was introduced, the Hon'ble Supreme Court of India, thereafter, from paragraph No.12 onwards, proceeded to consider what can be meaning of the term “interlocutory order” and first considered the definition contained in Halsbury's Laws of England, in paragraph No.12, which is extracted hereunder:-

“ 12. Ordinarily and generally the expression “interlocutory order” has been understood and taken to mean as a converse of the term “final order”. In volume 22 of the third edition of Halsbury's Laws of England at p. 742, however, it has been stated in para 1606: “... a judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. The meaning of the two words must therefore be considered separately in relation to the particular purpose for which it is required.”

In para 1607 it is said: “In general a judgment or order which determines the principal matter in question is termed ‘final’. In para 1608 at pp. 744 and 745 we



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Crl.RC.No.1775 of 2024

find the words: “An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declaration of right already given in the final judgment, are to be

worked out, is termed ‘interlocutory’. An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals.” (Emphasis Supplied)

9. Thereafter, considering the judgment of S. Kuppuswami Rao Vs. King, the Hon'ble Supreme Court of India has held as follows:-

“ 13. In S. Kuppuswami Rao v. King [AIR 1949 FC 1 : 1947 FCR 180] Kania, C.J. delivering the judgment of the Court has referred to some English decisions at pp. 185 and 186. Lord Esher, M.R. said in Salaman v. Warner [(1891) 1 QB 734] : “If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose



WEB COPY



Crl.RC.No.1775 of 2024

of the matter in dispute but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory.”

To the same effect are the observations quoted from the judgments of Fry, L.J. And Lopes, L.J.:

“Applying the said test, almost on facts similar to the ones in the instant case, it was held that the order in revision passed by the High Court [at that time there was no bar like Section 397(2)] was not a “final order” within the meaning of Section 205(1) of the Government of India Act, 1935. It is to be noticed that the test laid down therein was that if the objection of the accused succeeded, the proceeding could have ended but not vice versa. The order can be said to be a final order only if, in either event, the action will be determined. In our opinion if this strict test were to be applied in interpreting the words ‘interlocutory order’ occurring in Section 397(2), then the order taking cognizance of an offence by a Court, whether it is so done illegally or without jurisdiction, will not be a final order and hence will be an interlocutory one. Even so, as we have said above, the inherent power of the High Court can be invoked for quashing such a criminal proceeding. But in our judgment such an interpretation and the universal



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Crl.RC.No.1775 of 2024

*application of the principle that what is not a final order must be an interlocutory order is neither warranted nor justified. If it were so it will render almost nugatory the revisional power of the Sessions Court or the High Court conferred on it by Section 397(1). On such a strict interpretation, only those orders would be revisable which are orders passed on the final determination of the action but are not appealable under Chapter XXIX of the Code. This does not seem to be the intention of the Legislature when it retained the revisional power of the High Court in terms identical to the one in the 1898 Code. In what cases then the High Court will examine the legality or the propriety of an order or the legality of any proceeding of an inferior criminal court? Is it circumscribed to examine only such proceeding which is brought for its examination after the final determination and wherein no appeal lies? Such cases will be very few and far between. It has been pointed out repeatedly, vide for example, *River Wear Commissioners v. William Adamson* [(1876-77) 2 AC 743] and *R.M.D. Chamarbaugwalla v. Union of India* [AIR 1957 SC 628 : (1957) SCR 930] that although the words occurring in a particular statute are plain and unambiguous, they have to be interpreted in a manner which would fit in the*



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Crl.RC.No.1775 of 2024

context of the other provisions of the statute and bring about the real intention of the Legislature. On the one hand, the Legislature kept intact the revisional power of the High Court and, on the other, it put a bar on the exercise of that power in relation to any interlocutory order. In such a situation it appears to us that the real intention of the Legislature was not to equate the expression “interlocutory order” as invariably being converse of the words “final order”. There may be an order passed during the course of a proceeding which may not be final in the sense noticed in Kuppuswami case, but, yet it may not be an interlocutory order — pure or simple. Some kinds of order may fall in between the two. By a rule of harmonious construction, we think that the bar in sub-section (2) of Section 397 is not meant to be attracted to such kinds of intermediate orders. They may not be final orders for the purposes of Article 134 of the Constitution, yet it would not be correct to characterise them as merely interlocutory orders within the meaning of Section 397(2). It is neither advisable, nor possible, to make a catalogue of orders to demonstrate which kinds of orders would be merely, purely or simply interlocutory and which kinds of orders would be final, and then to prepare an exhaustive list of



WEB COPY



Crl.RC.No.1775 of 2024

those types of orders which will fall in between the two. The first two kinds are well known and can be culled out from many decided cases. We may, however, indicate that the type of order with which we are concerned in this case, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of subsection (2) of Section 397. In our opinion it must be taken to be an order of the type falling in the middle course.”

By a rule of harmonious construction, we think that the bar in subsection (2) of Section 397 is not meant to be attracted to such kinds of intermediate orders. They may not be final orders for the purposes of Article 134 of the Constitution, yet it would not be correct to characterise them as merely interlocutory orders within the meaning of Section 397(2). It is neither advisable, nor possible, to make a catalogue of orders to demonstrate which kinds of orders would be merely, purely or simply interlocutory and which kinds of orders would be final, and then to prepare an exhaustive list of those types of orders which will fall in between the two. The first two kinds are well-known and can be culled out from many decided cases. We may, however, indicate that the type of order with which we are concerned in



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Crl.RC.No.1775 of 2024

this case, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of sub-section (2) of Section 397. In our opinion it must be taken to be an order of the type falling in the middle course.

10. The Hon'ble Supreme Court of India, thereafter, considered the decisions in Amar Nath and Ors. Vs. State of Haryana and Another case, then, Mohan Lal Magan Lal thacker Vs. State of Gujarat and Parmeshwari Devi (SMT) Vs. State and Another and held in paragraph No.17 that applying literally the test would amount to insurmountable difficulty. Therefore, held that a purposeful interpretation of Section 397(2) of the Code of Criminal Procedure, whereby, it is concluded that it cannot be termed as if the Revision is maintainable under Section 397 of the Code of Criminal Procedure only against such of those final orders, against which, no appeal would lie, but, the Revision, would be maintainable as against such intermediate orders, which cannot be termed as pure and simple interlocutory order, but, at the same time, would not be final orders.



11. Time and again, the Hon'ble Supreme Court of India has considered the issue and laid down tests characterise whether an order is interlocutory order or not. In *Hasmukh A. Jahveri Vs. Shella Dadlani*, the Hon'ble Supreme Court of India held that the meaning of the term “interlocutory order” is not always converse of the term “final order” and held that an order determining important rights and liabilities cannot be termed as interlocutory. In *State of Gujarat Vs. Ashulal Nanji Bisnol*, it is held that the orders which affect the rights of the parties are not interlocutory but final orders.

12. In *Parmeshwari Devi (SMT) Vs. State and Another (cited supra)*, an order, summoning a third party to the case, though it may not be a conclusive with reference to the stage on which it is made, it was held that it was not interlocutory in nature. In *Amar Nath and Ors. Vs. State of Haryana and Another (cited supra)*, the test advocated is that if the upholding objections raised by one party, it would result in culminating the proceedings, then the same would not be an interlocutory order.



13. *In Sulochana Vs. M.Kulasekaran*, this Court had held that if the order substantially affects the rights of the accused, it would not be an interlocutory order. Therefore, in this background, as per the definition in Halsbury's Laws of England, which was approved by the Hon'ble Supreme Court of India, if the order simply relates to a matter of procedure and gives no final decision on matters in dispute, then it is interlocutory in nature. In this regard, in *L.G.R. Enterprises and Ors. vs. P. Anbazhagan*, this Court had enunciated the purpose of the Parliament bringing in Section 148 of the Negotiable Instrument Act and paragraph No.8(i) of the said judgment is extracted as hereunder:-

“ 8.1. Having observed and found that because of the delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings, the object and purpose of the enactment of Section 138 of the N.I. Act was being frustrated, the Parliament has thought it fit to amend Section 148 of the N.I. Act, by which the first appellate Court, in an appeal challenging the order of conviction under Section 138 of the N.I. Act, is conferred with the power to direct the convicted accused - appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation



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Crl.RC.No.1775 of 2024

awarded by the trial Court. By the amendment in Section 148 of the N.I. Act, it cannot be said that any vested right of appeal of the accused - appellant has been taken away and/ or affected.”

14. In Surinder Singh Deswal @ Col. S.S.Deswal and Ors. Vs. Virender Gandhi and Anr. (cited supra), the nature of power exercisable under Section 148 of the Negotiable Instruments Act, 1881 is discussed and laid down by the Hon'ble Supreme Court of India. It is useful to extract the paragraph No.9 of the said judgment as hereunder:-

“ 9. Now so far as the submission on behalf of the appellants, relying upon Section 357(2) CrPC that once the appeal against the order of conviction is preferred, fine is not recoverable pending appeal and therefore such an order of deposit of 25% of the fine ought not to have been passed and in support of the above reliance placed upon the decision of this Court in Dilip S. Dahanukar [Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd., (2007) 6 SCC 528 : (2007) 3SCC (Cri) 209] is concerned, the aforesaid has no substance. The opening words of the amended Section 148 of the NI Act are that



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Crl.RC.No.1775 of 2024

“notwithstanding anything contained in the Code of Criminal Procedure....”. Therefore irrespective of the provisions of Section 357(2) CrPC, pending appeal before the first appellate court, challenging the order of conviction and sentence under Section 138 of the NI Act, the appellate court is conferred with the power to direct the appellant to deposit such sum pending appeal which shall be a minimum of 20% of the fine or compensation awarded by the trial court.”

15. Applying the tests to the power exercisable under Section 148 of the Negotiable Instruments Act, 1881, as rightly pointed out by the learned Counsel for the respondent, it is not a pre-condition in the appeal to be taken on file and therefore will not result in a final order of deciding the appeal. Applying the test of deciding the rights of the parties, it has been held that it is only a direction to deposit, subject to the final outcome in the appeal and therefore is only a matter of procedure without finally determining the rights of parties. Applying the test as to whether nonpassing of such order or accepting of any plea by the accused or the complainant, whether it would result in culmination of proceedings, the answer is again in the negative.



Therefore, applying any of the tests advocated by the Hon'ble Supreme Court of India, still the order, which is passed in exercise of power under Section 148 of the Negotiable Instruments Act, is neither a final order nor an intermediate order so as to hold that the revision as against the same is maintainable.

16. Thus, in this context, it is pertinent to state that by the judgment of Kerala High Court in Samuel George, Maliyekkal Bunglow's case (cited supra), it has been held that such powers are in the interlocutory in nature and Revision is not maintainable. Even in a case as instance case where the direction of deposit is made coupling it as a condition for grant of suspension of sentence, this Court had already held in Udaiyar @ Sattaiudaiyar and Anr. Vs. State [Crl.R.C.(MD).No.126 of 2018] (stated supra) that the order for grant of suspension of sentence or bail are all interlocutory orders and are not revisable under Section 397 of the Code of Criminal Procedure. Therefore, viewing from any angle, I hold that the Revision against the present order is not maintainable.”

The above judgment is squarely applicable to the case on hand. As stated supra, the miscellaneous petition was filed for separate relief under



Crl.RC.No.1775 of 2024

WEB COPY

Sections 451 & 452 of Cr.P.C., and the main case was filed for maintenance under Section 125 of Cr.P.C. Therefore, the order passed in M.P.No.281 of 2018 cannot be construed as interim order, so as to hold the said execution petition non-maintainable. Hence, the revision is not maintainable and is liable to be dismissed.

12. Insofar as the second issue in this revision is concerned, the petition in M.P.No.281 of 2018 was filed for return of article under Sections 451 & 452 of Cr.P.C., and the maintenance case in M.C.No.154 of 2017 was filed under Section 125 of Cr.P.C. Both the petitions were filed for separate relief. If the interim maintenance was sought for and the same was ordered, then it can be merged with final order of maintenance. Therefore both the orders were passed under the different context and under different provisions and hence the order passed in M.P.No.281 of 2018 cannot be construed as interim order. There is no question of merging of order passed in M.P.No.281 of 2018 with the order passed in M.C.No.154 of 2017. Accordingly, the second point is answered.



Crl.RC.No.1775 of 2024

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13. As far as the third point is concerned as stated supra, both the orders in M.C.No.154 of 2017 and M.P.No.281 of 2018 were passed under different provisions and the order passed in M.P.No.281 of 2018 cannot be merged with the order passed in M.C.No.154 of 2017. Therefore, the respondents rightly filed two execution petitions to execute the order passed in M.P.No.281 of 2018 and M.C.No.154 of 2017. Hence both the execution petitions are very much maintainable and the trial Court rightly ordered and directed the petitioner to return the articles such as jewels and cash. It was further ordered to pay arrears of maintenance by the petitioner and non-bailable warrant was also issued against him.

14. Both the judgments relied upon by the learned counsel appearing for the petitioner are not applicable to the case on hand for the simple reason that the judgments were held in suits on the issue whether the interim order merges into the final order after decree is passed. For example in the suit for bare injunction, the interim relief can be asked for any interim injunction. Though the interim injunction granted while



Crl.RC.No.1775 of 2024

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pending the suit, when the suit was decreed for injunction, the interim injunction also merged with the final order. In the case on hand, as stated supra both the petitions were filed with different prayers under different provisions. Therefore, the order passed in M.P.No.281 of 2018 cannot be construed as interim order and as such there is no question of merging of the same with the order passed in M.C.No.154 of 2017.

15. In view of the above discussions, this Court finds no infirmity or illegality in the order passed by the trial Court and the present revision fails and is liable to be dismissed. Accordingly, the Criminal Revision Case stands dismissed.

07.08.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

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To
The VI Additional Family Court Judge,
Chennai.



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Crl.RC.No.1775 of 2024

G.K.ILANTHIRAIYAN. J,

rts

Order in
Crl.R.C.No.1775 of 2024

07.08.2025