



CrI.O.P.(MD)No.1731 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 20.07.2022

Delivered on : 02.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CrI.O.P.(MD)No.1731 of 2019
and
CrI.M.P.(MD)Nos.924 and 925 of 2019

Mohamed Siddiq

... Petitioner

vs.

1.Rasheedha Begum

2.Minor.Hamidha Begum
represented by the first
respondent (mother)

... Respondents

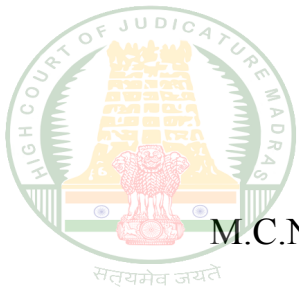
PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records in M.C.No.109 of 2016 pending on the file of the Family Court, Tiruchirappalli and quash the same as illegal and without jurisdiction.

For Petitioner : Mr.I.Abdul Basith

For Respondents : Mr.T.Lenin Kumar

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records of the proceedings in



M.C.No.109 of 2016 pending on the file of the Family Court, Tiruchirappalli, and quash the same.

WEB COPY

2. The petitioner is the only respondent and the first respondent herein, for herself and on behalf of her minor daughter/the second respondent herein has laid the maintenance claim in M.C.No.109 of 2016 and the same is pending on the file of the Family Court, Tiruchirappalli.

3. Admittedly, the petitioner married the first respondent on 12.04.1999 in S.K.Mahal at T.V.S.Toll gate, Tiruchirappalli, as per the Islamic rites and customs and that due to their wedlock, they were blessed with a daughter Hamidha Begum/second respondent and a son by name Imran Ali.

4. It is not in dispute that the petitioner has been running a chicken stall at Chennai.

5. The first respondent has raised so many allegations and charges against the petitioner, by alleging that she was sent out of the matrimonial home forcibly and she has been residing with her daughter



in her parents house, claimed monthly maintenance at Rs.20,000/- each for herself and for her daughter.

WEB COPY

6. Pending maintenance case, the husband has come forward with the present petition invoking Section 482 Cr.P.C. for quashment of the maintenance case.

7. It is not in dispute that the first respondent has earlier filed a complaint under the Domestic Violence Act in D.V.C.No.122 of 2016 against the petitioner and his family members and the same was pending on the file of the learned Additional Mahila Court, Trichy, and that the petitioner has filed similar petition in CrI.O.P.(MD)No.2019 of 2017 challenging the said DVC proceedings and the same was pending.

8. The first respondent has already filed an application in CrI.M.P.No.3116 of 2017 in D.V.C.No.122 of 2016 claiming interim maintenance and the learned Judicial Magistrate has passed an order awarding interim maintenance at Rs.5,000/- each for the respondents 1 and 2 and that the petitioner aggrieved by the said order, has filed an appeal before the Principal District and Sessions Court, Trichirappalli, and the same was pending.

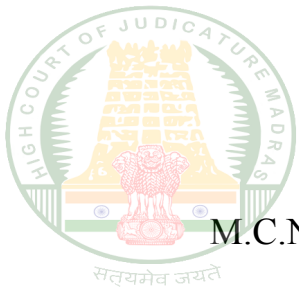


WEB COPY

9. It is not in dispute that subsequently, the learned Judicial Magistrate of Additional Mahila Court, Tiruchirappalli, after trial, has passed an order dated 06.10.2020 granting monthly maintenance at Rs.20,000/- to the first respondent and Rs.10,000/- to the second respondent payable from the date of petition and also granted residence and protection orders and orders for return of jewels and other Sridhana articles and compensation of Rs.10,00,000/- and also restrained the petitioner and others from committing Domestic Violence.

10. The main contention of the petitioner is that the first respondent, after filing the complaint under the Domestic Violence Act claiming maintenance and for other relief, has also simultaneously filed parallel maintenance petition with the same set of allegations and cause of action by invoking Section 125 Cr.P.C., which is superfluous and that the very continuation of the said proceedings under Section 125 Cr.P.C. against the petitioner is nothing but illegal and amounts to abuse of process of law.

11. The learned counsel for the petitioner would submit that the Family Court ought not to have taken the impugned proceedings in



WEB COPY

M.C.No.109 of 2016 on its file, since the first respondent has already initiated a comprehensive petition under the Domestic Violence Act with the similar and identical relief on the same set of allegations and cause of action, that the first respondent by deliberately suppressing the filing of the petition under the Domestic Violence Act has approached the Family Court with unclean hands and that the subsequent filing of the impugned proceedings in M.C.No.109 of 2016 and continuation of the same will not only amount to abuse of process of law, but is in violation of the legal position settled by this Court in ***B.Prakash vs. Deepa and others*** reported in ***2015-2-LW(Crl.) 392***.

12. The petitioner himself has referred two paragraphs of the said judgment in ***B.Prakash's*** case in the quash petition itself.

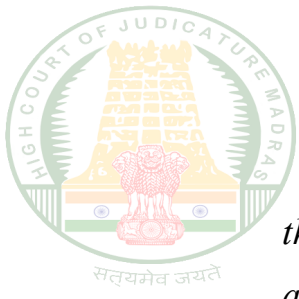
13. No doubt, as rightly pointed out by the learned counsel for the petitioner, a learned Judge of this Court, in similar circumstances has held that the filing of maintenance case under Section 20 of the Domestic Violence Act, after the disposal of the maintenance case filed under Section 125 Cr.P.C., is not legally permissible and the same would amount to clear abuse of process of Court.



14. But, subsequently, the Hon'ble Supreme Court in ***Rajnesb vs. Neha and others*** reported in (2021) 2 SCC 324, relied on by the learned counsel for the petitioner, considering the issue of overlapping jurisdiction, has issued the necessary directions. It is necessary to refer the directions issued by the Hon'ble Supreme Court,

“56. It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the D.V. Act and Section 125 of the Cr.P.C., or under H.M.A. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.

57. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so



WEB COPY



Crl.O.P.(MD)No.1731 of 2019

that the Court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the concerned court in the previous proceeding.”

15. Considering the above, the position of law is well settled by the Hon'ble Supreme Court that there is no bar or prohibition for initiating simultaneous proceedings claiming maintenance under the different Acts, but directed the Court, while deciding the quantum of maintenance in the subsequent proceedings shall take into account the maintenance awarded in the previous proceedings and determine the maintenance payable and further direction was given to the subsequent applicant to disclose about the previous maintenance proceedings and the orders passed therein.

16. In view of the legal dictum laid down by the Hon'ble Supreme Court, the only objection raised and the only ground upon which the impugned proceedings in M.C.No.109 of 2016 was sought to be quashed, is no more available to the petitioner.



WEB COPY

17. As already pointed out, the learned Additional Mahila Court has already disposed of the DVC complaint in D.V.C.No.122 of 2016 granting the reliefs claimed by the first respondent which includes payment of maintenance.

18. Since the subsequent claim for maintenance is now pending in M.C.No.109 of 2016, as per the dictum of the Hon'ble Supreme Court, the parties are duty bound to disclose the disposal of the DVC complaint and quantum of maintenance awarded so as to enable the Family Court to take into account, while determining the maintenance amount.

19. Except the above, the petitioner has not canvassed any other reason or ground for quashing the maintenance proceedings. Hence, this Court concludes that the Criminal Original Petition is absolutely devoid of merits and the same is liable to be dismissed.

20. Since the maintenance case is pending from 2016 onwards, this Court is of the view that necessary directions are to be issued for the earlier disposal of the case.



Crl.O.P.(MD)No.1731 of 2019

WEB COPY

21. In the result, this Criminal Original Petition is dismissed. The learned Judge of the Family Court, Tiruchirappalli, hereby is directed to dispose of the case in M.C.No.109 of 2016 within a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

02.09.2022

Index : Yes/No
Internet : Yes/No
csm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Family Court,
Tiruchirappalli.



WEB COPY



Crl.O.P.(MD)No.1731 of 2019

K.MURALI SHANKAR, J.

esm

Pre-delivery order made in
Crl.O.P.(MD)No.1731 of 2019

02.09.2022