

Crl.R.C.(MD).No.611 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 20.12.2023

Pronounced on :09.01.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD)No.611 of 2023

R.Ochappan

... Revision Petitioner/
Respondent/Respondent

Vs.

Keerthana

... Respondent/Revision Petitioner/
Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 & 401 of Cr.P.C., to allow the revision petition and set aside the impugned order passed by the learned IV Additional District and Sessions Judge, Madurai in Crl.R.P.No.15 of 2022 against M.C.No.26 of 2019 passed by the learned Additional Chief Judicial Magistrate, Madurai.

For Petitioner : Mr.A.K.Azhagarsami

For Respondent : No Appearance



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ORDER

This petition has been filed to set aside the impugned order passed by the learned IV Additional District and Sessions Judge, Madurai in Crl.R.P.No.15 of 2022, dated 07.02.2023 against M.C.No.26 of 2019 passed by the learned Additional Chief Judicial Magistrate, Madurai, dated 12.10.2021.

2. The revision petitioner is the father of the respondent. The respondent and her minor brother filed M.C.No.26 of 2019 before the learned Additional Chief Judicial Magistrate, Madurai, claiming maintenance of Rs.25,000/- under 125 Cr.P.C.

3.1. The petitioner is working as a driver in TNSTC. He married the mother of the respondents namely, Pandiyammal on 08.06.1997. Out of the wedlock, the respondent and her brother Prasanna were born. Thereafter, due to difference of opinion, the mother of the respondent filed HMOP.No.369 of 2012 under Section 13(B) of the Hindu Marriage Act, before the learned Sub Judge, Camp at Usilampatti, seeking divorce on the basis of mutual consent and the same was allowed on 28.02.2013. The said Pandiyammal and the petitioner got separated. Thereafter, the petitioner married another woman. The said



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Pandiyammal is unable to maintain herself and her children namely, the respondent and her brother. Hence, the respondent and her minor brother filed M.C.No.26 of 2019 before the learned Additional Judicial Magistrate, Madurai, seeking maintenance on the ground that the petitioner is working as a driver in Tamil Nadu State Transport Corporation and earning a sum of Rs.50,000/- as salary. He owns house at Nagamalaipudukottai, Madurai and has lands at Vikkiramangalam which is fetching Rs.20,000/- as income. The respondent's brother Prassanna is studying. Because of insufficiency of fund, she is unable to meet his educational expenditure and the other expenses. In the said maintenance petition, the minor Prasanna was represented by his sister namely, the respondent.

3.2. Even after serving of notice, the petitioner has not appeared before the learned trial Judge. But, the learned trial Judge has dismissed the maintenance petition filed by the respondent and his brother on the ground that the brother of the respondent is a minor and maintenance petition filed for herself and on behalf of her minor brother claiming maintenance is not maintainable for the reason that she is not a natural guardian and next friend of her minor brother.



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3.3. Aggrieved over the same, the respondent filed a Revision Petition in Cr.R.P.No.15 of 2022 before the learned IV Additional District and Sessions Judge, Madurai. The learned Sessions Judge has allowed the same on the ground that though the respondent cannot seek relief through the maintenance petition filed under Section 125 of Cr.P.C., the trial Court is the authority to grant maintenance to the respondent under Section 20(3) of Hindu Adoption and Maintenance Act, 1956, until she gets married and further stated that though the brother of the respondent has attained majority during the pendency of the CrI.R.P.No.15 of 2022, he is entitled for the maintenance from the date of filing of the maintenance case till the age of his majority by granting maintenance of Rs.7,500/- per month to the respondent and Rs.5,000/- per month to her brother. Aggrieved over the same, the petitioner has filed this Revision.

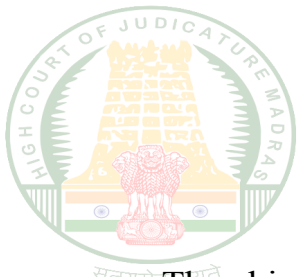
4. This Court considered the rival submission made on either side and perused the materials available on records and the impugned judgment and the precedents relied upon by them.



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5. The learned counsel for the petitioner submitted that at the time of mutual divorce, the mother of the respondent has received a sum of Rs. 5,50,000/- as permanent alimony towards her and her children and also gave an undertaking that she would not claim any maintenance in future. The above said submission of the learned counsel for the petitioner cannot be accepted. In the mutual decree granted in HMOP.No.369 of 2012, which was marked as Ex.P6, there was no clause for payments of any maintenance to the children. The payable clause is concerned, the mother of the respondent namely, the wife of the petitioner would not claim any maintenance and also there is no whisper regarding the payment of permanent alimony. Hence, the petitioners in M.C.No. 26 of 2019 are the children of the present revision petitioner and he is duty bound to maintain them. Since, the first petitioner namely Keerthana is now married, she is not entitled to claim maintenance. But her claim on behalf of her minor brother namely the second respondent in M.C.No.26 of 2019, is maintainable. But, the learned trial Judge erroneously dismissed the claim on the ground that the respondent namely Keerthana has no *locus standi* to file the petition for maintenance on behalf of her minor brother. Section 125 of Cr.P.C., is social welfare legislation. The Section is aimed to achieve the social justice.



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The object is to prevent vagrancy and destitution. Section 125 Cr.P.C., provides a speedy and efficacious remedy to those women, children and destitute parents who are in distress. The object of the 125 of Cr.P.C., is clearly demonstrated by the Hon'ble Supreme Court in various decisions in the following terms:

5.1. *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.”

5.2. *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.”



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5.3. *Vimala (K.) v. Veeraswamy (K.) [(1991) 2 SCC 375: 3.*

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.”

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



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5.5. *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”

5.6. *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



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when shall it land on 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.

5.7. *Begum Subanu v. A.M. Abdul Gafoor, (1987) 2 SCC 285*

“ 12..... Section 125, its forerunner being Section 488, has been enacted with the avowed object of preventing vagrancy and destitution. The section is intended to ensure the means of subsistence for three categories of dependants viz. children, wives and parents who are unable to maintain themselves. The three essential requisites to be satisfied before an order of maintenance can be passed are that (1) the person liable to provide maintenance has sufficient means; (2) that he has neglected or refused to maintain and (3) the dependant/dependants is/are unable to maintain



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himself/herself/themselves as the case may be. The legislature being anxious that for the sake of maintenance, the dependants should not resort in begging, stealing or cheating etc the liability to provide maintenance for children has been fixed on the basis of the paternity of the father and the minority of the child and in the case of major children on the basis of their physical handicap or mental abnormality without reference to factors of legitimacy or illegitimacy of the children and their being married or not.”

Section 125 of Cr.P.C., does not prohibit any person from filing maintenance petition on behalf of the minor children. It creates an obligation to pay maintenance to the minor. Without any legislative prohibition to file the maintenance claim on behalf of the minor brother by the married sister who has taken care of the said minor brother, the dismissal of the maintenance petition on the ground of the *locos standi* by the learned trial Judge is not legally correct. When there is no legal impediment to file the maintenance petition by the sister of the minor brother, the learned trial Judge ought to have picked out the interpretation of the provision of Section 125 of Cr.P.C., which advances the cause. The same was emphasised by the Hon'ble Supreme Court in the following judgments:



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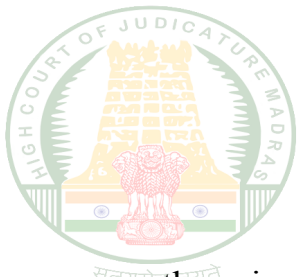
Ramesh Chander Kaushal v. Veena Kaushal reported in 1978 4 SCC 70: 9.... *The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause — the cause of the derelicts.”*

Fuzlunbi v. K. Khader Vali, (1980) 4 SCC 125:

“The conscience of social justice, the cornerstone of our Constitution will be violated and the soul of the scheme of Chapter IX of the Code, a secular safeguard of British-Indian vintage against the outrage of jetsam women and floatsam children, will be defiled if judicial interpretation sabotages the true meaning and reduces a benign protection into a damp squib.”

Therefore, the learned revisional Judge rightly held that the maintenance petition filed by the petitioner for herself and on behalf of her minor brother is maintainable.

6. Even though the married sister alone preferred the revision against the dismissal of the maintenance claim against her and no revision was preferred by



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the minor brother, the learned revisional Judge, exercised the *suo motu* power under Section 399 of Cr.P.C., to set aside the dismissal order passed against the minor children on the ground of the *locus standi* and granted maintenance to the said minor brother of the revision petitioner also. The same was vehemently opposed by the learned counsel for the petitioner stating that without any revision on behalf of the minor brother, the revisional Court has no power to grant maintenance in favour of the minor brother. This Court is not inclined to accept the submission of the learned counsel for the petitioner for the reason that the learned revisional Judge exercised the *suo motu* power in the interest and welfare of the minor children by exercising his *parens patriae* jurisdiction. This Court finds no reason to differ with the said reasoning of the learned revision Judge.

7. The learned counsel for the petitioner further submitted that his salary is only a sum of Rs.43,000/- and hence, the amount awarded as maintenance by the trial Judge is so high. The said submission of the learned counsel for the petitioner cannot be accepted considering the cost of living as on date. The Revisional Court only granted Rs.5,000/- to the second petitioner, who is none other than the son of the petitioner herein.



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8. Accordingly, this criminal revision case is dismissed by confirming the impugned order passed by the learned IV Additional District and Sessions Judge, Madurai in Crl.R.P.No.15 of 2022, dated 07.02.2023.

09.01.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To

- 1.The IV Additional District and Sessions Judge,
Madurai.
- 2.The Section Officer,
Records Section,
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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