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S. Rajendran Vs. Revathy

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Court : Chennai

Decided On : Mar-15-1994

Reported in : 1994CriLJ3017; II(1994)DMC448

Judge : Pratap Singh, J.

Appeal No. : Criminal Original Petition No. 16136 of 1992

Appellant : S. Rajendran

Respondent : Revathy

Advocate for Def. : C. Dhanyakumar, Adv.

Advocate for Pet/Ap. : K. Ramachandran, Adv.

Judgement :
ORDER

1. The respondent in CMP No. 1100/92 on the file of Judicial Magistrate-1, Villupuram has filed this petition under section 482 Cr.P.C. to call for the records in the above case end to quash the same.

2. Short facts are : The respondent has filed a petition for maintenance against the petitioner under section 125 Cr.P.C. in MC. No. 232/85 on the file of Judicial Magistrate, Vilupuram. After enquiry, the learned Magistrate has passed an order awarding maintenance at the rate of Rs. 350/- per month. Subsequently, the

respondent again filed MC. No. 12/92 on the file of Judicial Magistrate-I, Vilupuram, under Section 125 Cr.P.C. praying for maintenance at the rate of Rs. 500/- per month. On the allegation that since the order of maintenance passed in MC. No. 232/85, the respondent filed CMP No. 1100/92 to realise the arrears of maintenance during the pendency of that petition, the petitioner paid part of the amount and made an offer to live together and believing the promise she agreed to live together and settled the case. It is further alleged that for some time the petitioner was living with the respondent and then again he began to ill-treat her and ultimately drove her out, asking her to get Rs. 20,000/- from her parents. The respondent's parents gave Rs. 20,000/- and settled them at Nagapattinam. Even thereafter, the respondent was ill-treating her and finally he drove her out on 5-6-1992. So she has filed that petition for maintenance. It appears that during the course of enquiry in MC. No. 12/92 while the respondent gave evidence as P.W. 1, her evidence was stopped, half was and order was passed permitting her to withdraw the petition. Thereafter she has filed CMP. No. 1100/92 to realise the arrears of maintenance.

3. Mr. K. Ramachandran, learned counsel for the petitioner, would submit that in as much as the respondent had compromised the matter with the petitioner and lived together from 1989-92 she cannot thereafter execute the order passed in MC. No. 232/82 by filing this petition in CMP 1100/92 for realising the arrears of maintenance. Per contra Mr. T. Dhanya Kumar, learned counsel for the respondent, would submit that the order of maintenance passed in MC. No. 232/85 still stands and it did not get erased for the reason that the spouses lived together for some period, after the passing of the award in MC. No. 232/85.

4. I have carefully considered the submissions made by the learned counsels. If award of maintenance is to be cancelled under section 125 Cr.P.C. it can be done only by resorting to Section 125(5) Cr.P.C. by an order of the Magistrate. Section 125(5) reads as follows :

'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.'

In the present case, there is no order cancelling the maintenance passed in MC. No. 232/85. The question to be noted is that the grounds now raised by the learned counsel for the petitioner are not the reasons for which the order of maintenance can be cancelled under Section 125(5) Cr.P.C.

5. Mr. T. Dhanyakumar, learned counsel for the respondent, would rely upon Bhupinder Singh v. Daljit Kaur, : 1979 CriLJ198 where in the Apex Court has held that S. 125 is a provision to protect the weaker of the two parties, namely, the neglected wife. If an order for maintenance has been made against the deserter, it will operate until vacate a or altered in terms of the provisions of the Code a it is open to him to initiate appropriate proceedings. But until the original order for maintenance is modified or cancelled by a higher court or is varied or vacated in terms of Section 125(4) or (5) or S. 127, its validity survives. It is enforceable and no plea that there has been cohabitation in the interregnum or that there has been a compromise between the parties can hold good as a valid defence. The Apex Court has laid the law as above. Therefore, the grounds urged by Mr. K. Ramachandran, learned counsel for the petitioner cannot stand.

6. In the result, this petition fails and shall stand dismissed.

7. Petition dismissed.

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