

Vanaja Vs. Gopu

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Court : Chennai

Decided On : Nov-16-1990

Reported in : I(1992)DMC347; (1991)IMLJ290

Judge : Ratnam, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 24; Code of Criminal Procedure (CrPC) - Sections 125, 127(2) and 127(4)

Appeal No. : C.R.P. No. 2524 of 1990

Appellant : Vanaja

Respondent : Gopu

Advocate for Def. : D. Sivakumar, Adv.

Advocate for Pet/Ap. : T. Murugamanickam, Adv.

Disposition : Petition allowed

Judgement :

Ratnam, J.

1. This Civil Revision Petition, at the instance of the wife, is directed against the order of the Court below dismissing the application filed by her in I.A. No. 80 of 1987 in H.M.O.P. No. 171 of 1986, under Section 24 of the [Hindu Marriage Act,](#)

[1955](#), praying that the respondent should be directed to pay the petitioner maintenance in a sum of Rs. 200/- every month and Rs. 750/- to meet the expenses of that proceeding.

2. Briefly stated, the facts giving rise to the Civil Revision Petition, are as follows:- On 17.9.1977, the respondent herein married the petitioner at Salem and the petitioner gave birth to a daughter. The petitioner and the respondent lived together as wife and husband till 22.8.1984. Misunderstandings appear to have arisen between the parties, which ultimately led to the petitioner being obliged to leave for her parents' house. On 15.7.1985, the petitioner issued a notice to the respondent, setting out the circumstances, under which she was obliged to leave the house of the respondent and demanding payment of maintenance by the respondent and other expenses, to which, on 23.7.1985, the respondent replied, requiring the petitioner to come and live with him. To this, on 29.7.1985, the petitioner sent a rejoinder and subsequently, the petitioner filed M.C. No. 9 of 1985 on the file of the Chief Judicial Magistrate, Salem, under Section 125, Code of Criminal Procedure, praying for the award of maintenance to her. In that application, the petitioner stated that the respondent was addicted to drinks and had also developed illicit intimacy with another woman and that she was beaten and driven out of the house by the respondent, justifying her living separately from the respondent and claiming maintenance. That application was resisted by the respondent disputing the grounds alleged by the petitioner. However, on 31.3.1986, in M.C. No. 9 of 1985, the Chief Judicial Magistrate found that the petitioner had established the grounds set out by her in that petition and also found that the petitioner was obliged to leave the respondent for a just cause and that the respondent should pay the petitioner maintenance at the rate of Rs. 250/- per mensem from 31.3.1986 onwards, having regard to the income of the respondent. In Crl. R.C. No. 300 of 1986, the respondent questioned the correctness of that order, but by order dated 30.1.1990, this Court confirmed the order of the Chief Judicial Magistrate, Salem, in M.C. No. 9 of the 1985 and dismissed Crl. R.C. No. 300 of 1986. It is not now in dispute and it is also indeed the finding of the Court below in the present proceedings, that the respondent had not paid the maintenance amount to the petitioner, as ordered in M.C. No. 9 of 1985 and confirmed by this Court in Crl. R.C. No. 300 of 1986. While matters

stood thus, the respondent, some time in November, 1986, instituted H.M OP. No. 171 of 1986, Sub Court, Salem under S 13 (1) (1-b) of the Hindu Marriage Act, praying for the passing of a decree for divorce annulling the marriage between the respondent and the petitioner on the ground that the petitioner had voluntarily and wilfully withdrawn from the company of the respondent, without any valid or reasonable cause, for a period of two years from 23.8.1984. That proceeding is being contested by the petitioner on grounds, which need not be noticed for purpose of the present Civil Revision Petition. In I.A. No. 80 of 1987 in H.M.O P, No. 171 of 1986, filed under Section 24 of the Hindu Marriage Act, the petitioner prayed for a direction to the respondent to pay her Rs. 200/- every month towards maintenance and Rs. 750/- to meet the expenses of the litigation launched by the respondent. Amongst others, an objection was raised by the respondent that having regard to the prior proceeding under Section 125, Cr. P.C. in M.C. No. 9 of 1985, on the file of the Chief Judicial Magistrate, Salem, confirmed by this Court in Crl. R.C. No. 300 of 1986, the petitioner was not entitled to make a claim against the respondent for maintenance and that the petition deserved dismissal, as the petitioner was not entitled to any relief. The learned Subordinate Judge, Salem found that the respondent had not paid to the petitioner the maintenance amount awarded in M.C. No. 9 of 1989, as confirmed by this Court in Crl. R.C. No. 300/86, but that, in view of the decision in Mamta Rani v. RiaJ Kumar, I (1985) IMC 141 the petitioner cannot seek payment of maintenance from the respondent for a second time in view of the prior proceedings under Section 125, Cr.P.C. However, the Court directed the respondent to pay the petitioner Rs. 300/- towards litigation expenses. It is the correctness of this order in so far as it is against the petitioner that is challenged in this Civil Revision Petition.

3. Learned Counsel for the petitioner contended relying upon the conclusion arrived at by the Court below that the respondent had not paid the maintenance amounts to the petitioner as per the order passed in the proceedings under Section 125, Cr.P.C. that the view taken by the Court below that the petitioner is not entitled to claim maintenance even in proceedings under Section 24 of the Hindu Marriage Act, owing to the prior proceedings under Section 125, Cr.P.C. is erroneous. It was also further pointed out that the decision relied by on by the Court below in Mamta Rani v. Raj Kumar, 1 (1985) IMC 141 did not have any

application at all. Attention was also drawn by learned Counsel in this connection to the decisions reported in *Surjit Kaur v, Tirath Singh*, AIR 1978 P.&H. 112, *Ramesh Chander v. Veena Kaushal*, : 1979 CriLJ3 , *Ganapathy v. Rajalakshmi*, AIR 1982 T.L.N.J. 426 and *Sriramachandra Murthy v. Satya Sathimani*, I (1984)-I-MMC 406 (A.P.) On the other hand, learned Counsel for the respondent submitted that the petitioner having already succeeded in obtaining an order for payment of maintenance from the respondent in the proceedings under Section 125, Cr.P.C. cannot be permitted again to recover maintenance under Section 24, Hindu Marriage Act, and strongly relied upon the decisions in *Mamta Rani v. Raj Kumar*, I (1985) IMC 141 and *Sudershan Kumar v. Deepak*, 1985 Cri. L. J. 2511 (1981) DMC 191 (P&H;).

4. Whatever previously might have been the right of the wife to claim maintenance as an incident of the status of matrimony on the establishment of the relationship of wife and husband, now, under Section 18(1) of the Hindu Adoptions and Maintenance Act, which came into operation on 21.12.1956, a Hindu wife, whether married before or after the commencement of that Act, shall be entitled to be maintained by her husband during her lifetime. Section 18(2) of that Act enumerates the circumstances, under which, a Hindu wife is entitled to live separately from her husband, without forfeiting her claim to maintenance. Thus, the right of the wife to claim maintenance from the husband, even in those cases falling under Section 18(2) of the Hindu Adoptions and Maintenance Act, when she is obliged to live separately from her husband, is a statutory one. The method and manner of enforcing this right, would necessarily depend upon the circumstances obtaining in any particular case. It may be that in a given case, the wife may resort to proceedings under Section 125, Cr.P.C. in the hope and with the expectation that she would get quicker and speedier relief in those proceedings. Equally, it may well be that a wife may resort to proceedings before a Civil Court for the enforcement of such right. Those, however, may at best be characterised as the adoption of different methods for the enforcement of the right to maintenance. It is necessary in this connection to remember that the right conferred under Section 24 of the Hindu Marriage Act, is in the nature of a special right, arising on initiation and during the pendency of the proceedings by one or the other of the parties to the marriage, under the provisions of that Act. Under Section 24 of the Hindu

Marriage Act, the pendency of proceedings under that Act, is an essential condition for the exercise of the right either by the wife or the husband, as the case may be seek an order for payment of the expenses of the proceeding and a monthly sum sufficient for his or her support. It is thus clear that the right to claim maintenance or litigation expenses under Section 24 of the Hindu Marriage Act, is not made available generally to the parties to a marriage, but only when a proceeding between the spouses is pending under that Act, and in that respect, the right conferred under Section 24 of that Act, is in the nature of a special statutory right not in any manner outside the provisions Section 24 of the Hindu Marriage Act. The purpose behind Section 24 of the Hindu Marriage Act is that parties to a matrimonial cause should not take undue and unfair advantage of a superior financial capacity to defeat the rightful claims of a weaker party and the proceedings under Section 24 of that Act serve a limited purpose, i e. during the pendency of proceedings under that Act, to enable the weaker party to establish rights without being in any manner hindered by lack of financial support. If the special nature of the statutory right under Section 24 of that Act and its purpose, are borne in mind, it is at once clear that the enforcement of that right, cannot in any manner be hedged in by a consideration of proceedings otherwise initiated, either under Section 125, Cr.P.C. or under the ordinary law. Furthermore, in this case, the finding recorded by the Court below is to the effect that the respondent had not paid to the petitioner even the amounts of maintenance awarded in the proceedings under Section 125, Cr.P.C., and there can, therefore, be absolutely no justification whatever for declining to countenance the claim of the petitioner for maintenance on the ground of the prior proceedings under Section 125, Cr.P.C, It may also be pointed out that in proceedings under Section 125, Cr.P.C. the power of the Magistrate is limited to an award of monthly maintenance not exceeding Rs. 500'-in the whole, and under Section 127(2) and (4) Cr.P.C. provision is made for the cancellation or variation of the magisterial order, as a consequence of a decision of a competent civil Court and for the civil Court to take into account the amount paid to recovered by a person, pursuant to an order under Section 125 Cr.P.C. The aforesaid provisions do not in any manner impinge upon the specific statutory right conferred under Section 24 of the Hindu Marriage Act, upon the parties to a proceeding under the provisions of that Act. It would, therefore, follow

that the prior proceedings under Section 125, Cr.P.C, cannot be put against the petitioner, as a ground for declining to entertain her claim, for maintenance in enforcement of her statutory right under Section 24 of the Hindu Marriage Act.

5. It would be appropriate at this stage to refer to the decisions relied on by learned Counsel for the petitioner. In *Surjit Kaur v. Tirath Singh*, AIR 1978 P&H; 112. Interpreting Section 24 of the Hindu Marriage Act and considering the question whether proceedings under Section 488 of the old Cr.P.C., corresponding to Section 125, Cr.P.C. would have any impact upon the right conferred under Section 24 of the Hindu Marriage Act, it was held that a mere pre existing order under the Criminal Procedure Code for payment of maintenance, does not oust the jurisdiction of the Civil Court to allow maintenance Pendente lite under Section 24 of the Hindu Marriage Act. In so holding, reference was made to *Harbans Lal v. Ganga Devi*, 1976 CHA L.R. 250 where the prayer to stay proceedings under Section 125, Cr.P.C. on the ground that, pendente lite maintenance had been awarded by the High Court under Section 24 of the Hindu Marriage Act, was declined on the ground that the wife had an independent right to claim maintenance under Section 125, Cr.P.C, even if she had been allowed maintenance under Section 24 of the Hindu Marriage Act, *Ramesh Chander v. Veena Kaushal*, : 1979 CriLJ3 dealt with a case where the husband sought divorce through the civil Court and there was a maintenance claim by the wife through the Criminal Court and as an interim measure, the District Court awarded maintenance, which was fixed at Rs. 400/- per mensem by the High Court for the wife, while the Magistrate ordered monthly maintenance of Rs. 1000/-. What was canvassed before the Supreme Court was the propriety of the order passed by the Magistrate in awarding maintenance at the rate of Rs. 1,000/-per mensem, for the mother and two children together, as that ran counter to the provisions of Section 125, Cr.P.C. Repelling that argument, the Supreme Court pointed out that Section 125, Cr.P.C. is a measure of social justice and specially enacted to protect women and children and that each claimant for maintenance, be it he or she, the wife, child, father or mother, is independently entitled to maintenance, upto a maximum of Rs. 500/- p.m. and in that view, the order of the Magistrate, awarding maintenance in a sum of Rs. 1000/-was upheld. Though from the judgment of the Supreme Court, it does not appear that the Court had any occasion to deal with

the impact of proceedings under Section 125, Cr.P.C. on a claim arising under Section 24, Hindu Marriage Act, it is possible to infer that the Supreme Court did not find anything wrong in the awarding of maintenance by the Civil Court in divorce proceedings and also by the Magistrate in the course of proceedings under Section 125, Cr.P.C., and to this extent, this decision appears to support the stand of the petitioner *Ganapathy v. Rajalakshmi*, (1982) T.L.N.J. 426, dealt with the question, whether the provision in a compromise for payment of maintenance by husband to wife in a suit instituted by the wife against the husband, as an indigent person, would preclude her from claiming maintenance in a proceeding instituted by the husband under the provisions of the Hindu Marriage Act, for the dissolution of the marriage and for the custody of the minor child. Relying upon the decision in *A. Simhachalam, v. Papamma*, : AIR 1973 AP31 to the effect that the right under Section 24 of the Hindu Marriage Act is a separate and independent one, it was held that the provision in a compromise regarding the payment of maintenance to the wife by the husband, cannot operate as a bar for the Court awarding Interim maintenance under Section 24 of the Hindu Marriage Act. This decision would also clearly establish that the right conferred under Section 4 of the Hindu Marriage Act, is in the nature of a special right, which could be availed of only when proceedings under that Act are pending and not otherwise and it follows that the earlier proceedings under Section 125, Cr.P.C would not operate as, a bar to claim maintenance under Section 24 of the Hindu Marriage Act, as in this case In *Sri Ramachandra Murthy v. Satya Sathimani*, I (1984) DMC 406 the question arose whether when proceedings under Section 13 of the Hindu Marriage Act were pending and it was open to the wife to lay a claim for alimony pendente lite under Section 24 of the Hindu Marriage Act, she could resort to magisterial proceedings for alteration of the maintenance. It was pointed out that the remedies under Section 24 of the Hindu Marriage Act and under Section 125 CrP.C. are not alternative, but concurrent and optional remedial measures, intended to allieviate the hardship that may be caused to either spouse and the possibility of the availability of a remedy under Section 24 of the Hindu Marriage Act, would not take away the power and jurisdiction of the Court under Section 125, Cr.P.C. to grant relief. Though the ultimate conclusion appears to be correct, the view expressed that the rights under Section 24, Hindu Marriage Act and under Section

125, Cr.P.C. are concurrent and optional, overlooks the specific provisions in Section 24 of the Hindu Marriage Act, that before the right thereunder could be availed of, matrimonial proceedings must be pending and that requirement has been lost sight of. Even so the conclusion that the availability of one remedy, would not bar the other, appears to support the contention of learned Counsel for the petitioner. In this connection, it would be useful to make a reference to *Kuttappan v. Thanka* (1985) K.L.T. 849 where it had been pointed out that the purpose, nature of right and the remedy provided under Section 125, Cr.P.C. and under Section 24 Hindu Marriage Act, are different and the procedure and method of recovery are also different and the remedies are not inconsistent with each other. This decision would also support the contention of learned Counsel for the petitioner.

6. On the other hand, *Mamta Rani v. Rajkumar, I* (1985) DMC 141 upon which considerable reliance was placed by learned Counsel for the respondent, overlooks the special nature of the right conferred under S. 24 of the Hindu Marriage Act, during the pendency of the proceedings initiated under Act. Apart from it, it is seen from a careful reading of the brief judgment that it had not been laid down that the initiation of proceedings under Section 125, Cr.P.C. would bar an application under Section 24 of the Hindu Marriage Act, but that amounts, if any paid, pursuant to an order made under Section 24 of the Hindu Marriage Act, would be given credit to in respect of the amounts payable under the proceedings under Section 125 Cr. P.C. as there was no justification for the husband being called upon to pay to the wife, maintenance amounts, twice over. At best, this decision can be said to recognise an adjustment of the payments, if made, towards maintenance under Section 24 of the Hindu Marriage Act, towards the amounts payable by the husband under Section. 125 Cr.P.C. and nothing more. That would also indicate that there could be two orders in respect of the payment of maintenance and that would rule out of the possibility of one being a bar to the other. In *Sudarshan Kumar v. Deepak*, 1985 Cr.L J.52 It was held that there cannot be different maintenance orders running parallel at one and the same time and only one of them would be enforceable and the others, would just remain dormant. It had earlier been pointed out that the right conferred under Section 14 of the Hindu Marriage Act is in the nature of a special right available during the

pendency of proceedings under the Hindu Marriage Act and that cannot in any manner be affected by the proceedings under Section 125, Cr.P.C. If that be so, there could really be no valid objection to the being two orders, though it may be that the amounts recovered by the enforcement of one, may have to be adjusted even towards the other, but both the orders should be regarded as being alive and enforceable and the view expressed that only one is enforceable and the other remains dormant, with respect, appears to be not correct and this decision cannot, therefore, be of any assistance to the respondent.

7. Thus, on a due consideration of the facts, relevant statutory provisions as well as the decisions, the conclusion is irresistible that the Court below was in error in declining to consider the claim of the petitioner for the award of maintenance under Section 24 of the Hindu Marriage Act and in awarding only Rs. 300/- towards litigation expenses, which appears to be totally inadequate. The Civil Revision Petition is, therefore, allowed and the order of the Court below is set aside and I.A. No. 80 of 1987 in H.M.O. No. 171/86, Additional Sub Court, Salem, is remitted to the Court below for a fresh disposal on merits and accordance with law and in the light of the observations contained herein. The petitioner will be entitled to her costs in this petition.

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