

(2010) 11 MAD CK 0208

Madras High Court (Madurai Bench)

Case No: Criminal R.C. (MD) . No. 713 of 2010 and M.P (MD) No. 1 and 2 of 2010

Pounraj

APPELLANT

Vs

Packialakshmi @ Veni and

RESPONDENT

Mohanalakshmi

Date of Decision: Nov. 10, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 126, 128

Hon'ble Judges: S. Tamilvanan, J

Bench: Single Bench

Advocate: G. Marimuthu, for the Appellant; V. Kathirvelu, for K. Prabhu, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S. Tamilvanan, J.

Heard the learned Counsel appearing for the Petitioner as well as learned senior counsel appearing for the Respondents.

2. Challenging the order dated 18.08.2008, made in Crl.M.P. No. 5051 of 2009 in M.C. No. 20 of 2004, on the file of the District Munsif cum Judicial Magistrate, Sivagiri, the Criminal Revision has been preferred by the Petitioner.

3. It is an admitted fact that the Respondents herein being the wife and the minor daughter, had filed M.C. No. 20 of 2004, seeking maintenance, u/s 125 of Code of Criminal Procedure After enquiry, the learned Chief Judicial Magistrate, Srivilliputhur passed an order, directing the revision Petitioner herein to pay monthly maintenance of Rs. 750/-each, to the Respondents herein. Subsequently, the Respondents herein filed Crl.M.P. No. 4244 of 2007 for enhancing the aforesaid maintenance amount awarded earlier. By order dated 16.06.2010, the learned Chief Judicial Magistrate, Srivilliputhur passed an order enhancing the maintenance amount awarded in favour of the Respondents herein, whereby the Petitioner

herein was directed to pay a sum of Rs. 1,000/-each, to the Respondents herein from 01.09.2007.

4. It is not in dispute that the said order reached its finality. Subsequently, the Respondents herein filed Crl.M.P. No. 5051 of 2009 in M.C. No. 20 of 2004 before the District Munsif cum Judicial Magistrate, Sivagiri u/s 128 of Cr.P.C., towards the execution of the order of maintenance amount awarded by the learned Chief Judicial Magistrate, Srivilliputhur. By order dated 18.08.2008, the learned District Munsif-cum-Judicial Magistrate, Sivagiri passed order, directing the Petitioner herein to pay maintenance at the rate of Rs. 1,000/-each per month to the Respondents herein from 05.02.2010 on or before 06.09.2010.

5. The learned Counsel appearing for the Petitioner submitted that as per the calculation, the arrears of maintenance is only Rs. 12,000/-, out of which, Rs. 2,000/-was already paid on 15.09.2010 and the balance amount is only Rs. 10,000/-. Though the Petitioner is ready to pay the amount, he has challenged the jurisdiction of District Munsif cum Judicial Magistrate, Sivagiri in passing the order.

6. Per contra, Mr. V. Kathirvelu, learned senior counsel appearing for the Respondents submitted that the jurisdiction u/s 128 of Code of Criminal Procedure for enforcement of order of maintenance could not be disputed by the Petitioner. The learned senior counsel further contended that there is an error in calculating the arrears of maintenance by the Court below and hence the Respondents herein have also filed Crl.RC.(MD) No. SR.26960 of 2010, which is yet to be numbered. According to the learned senior counsel appearing for the Respondents, the arrears of maintenance is Rs. 34,500/-as per the petition dated 27.11.2009. However, the Court below has passed an order directing the revision Petitioner to pay maintenance only from 05.02.2010 for a total sum of Rs. 12,000/-erroneously. Aggrieved by which, the aforesaid unnumbered criminal revision has been preferred.

7. The short point for consideration in this petition is that Whether the criminal revision petition has to be allowed and the order passed by the District Munsif cum Judicial Magistrate, Sivagiri, dated 18.08.2008 has to be set aside. The revision Petitioner herein has not disputed the factum that the learned Chief Judicial Magistrate, Srivilliputhur by order dated 16.06.2010 in Crl.M.P. No. 4244 of 2007, had enhanced the maintenance amount payable to the Respondents 1 and 2 at Rs. 1,000/-each from 01.09.2007, and that order has not been challenged. Hence the quantum of maintenance has reached its finality. Similarly, the petition filed u/s 128 of Code of Criminal Procedure was taken on file by the aforesaid District Munsif cum Judicial Magistrate, Sivagiri, the same was not challenged by way of revision by the Petitioner herein and further as contended by the learned senior counsel appearing for the Respondents, the place "Sivagiri" is in the border of Tirunelveli District and further the learned senior counsel drew the attention of this Court to Section 126 of Code of Criminal Procedure and 128 of Code of Criminal Procedure Even as per the

Section 126 of Code of Criminal Procedure the proceeding could be initiated against any person in any district, (a) where he is, or (b) where he or his wife resides, or (c) where he last resided with his wife, or as the case may be, it being a welfare legislation.

8. In the instant case, admittedly, the enhancement of maintenance was ordered by the learned Chief Judicial Magistrate, Srivilliputhur, which was not challenged by the Petitioner herein. The petition u/s 128 of Code of Criminal Procedure for enforcement of order of maintenance was filed before the District Munsif cum Judicial Magistrate, Sivagiri in the year 2009, and that was also not challenged by the revision Petitioner herein who was the Respondent therein. After passing order on merits, it is not open to the revision Petitioner to challenge the jurisdiction and further Section 128 of Code of Criminal Procedure clearly reads that the order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non payment of the amount of maintenance awarded.

9. In the instant case, the learned Magistrate has passed the detailed order that there is no dispute with regard to the identity of the parties. Even the revision Petitioner has not disputed the identity of the Respondents, who filed the petition before the Court below and therefore, now it is not open to the revision Petitioner to challenge the jurisdiction after the order being passed by the learned District Munsif cum Judicial Magistrate, Sivagiri showing that the Court below has no jurisdiction to pass the aforesaid order. When there is no dispute with regard to the identity of the party, as per the Section 128 of Cr.P.C., there is no error on the part of the Court below in passing an order and therefore, the Criminal Revision Petition has no merit and accordingly, the same is liable to be dismissed. As far as the quantum of arrears of maintenance is concerned, it is left open to the parties, to be decided in the other criminal revision petition, said to have been filed by the Respondents herein. So far as this revision petition is concerned, there is no grounds available in favour of the Petitioner to challenge the order and the grounds raised by the Petitioner disputing the jurisdiction u/s 128 of Code of Criminal Procedure is also not legally sustainable. Hence, the same is liable to be dismissed.

10. The Petitioner is directed to pay the admitted arrears of maintenance of Rs. 10,000/-within a period of four weeks from the date of receipt of a copy of this order. If the order is not complied with, the Respondents would be at liberty to proceed against the Petitioner herein in accordance with law. Consequently, connected miscellaneous petitions are closed.