

(1991) 02 MAD CK 0101

In the Madras High Court

Case No : Criminal M.P. No. 457 of 1991

M.B. Veda @ Vedavalli

APPELLANT

Vs

P.S. Kuppusamy

RESPONDENT

Date of Decision : 25-02-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 483
Hindu Marriage Act, 1955 — Section 24

Citation : (1992) 1 DMC 418

Hon'ble Judges : Padmini Jesudurai, J

Bench : Single Bench

Judgement

Padmini Jesudurai, J.—Invoking Section 483, Criminal Procedure Code, the petitioner in M.C. No. 483 of 1989 pending before the Principal Family Court, Madras, seeks a direction to the learned Judge to dispose of the above M.C. at an early date.

The petitioner had filed the above case claiming maintenance u/s 125 Cr. PC. against the respondent, her husband. She had also filed Cr. M.P. No. 865/1989 on the same day, praying for interim maintenance till the disposal of the main case. It is stated that while the above petitions were pending, the respondent filed Matrimonial O.P. No. 1183 of 1989 in the same Court u/s 13(I)(a)(1b) of the Hindu Marriage Act for a decree for divorce on the ground of cruelty and desertion. The petitioner had filed her counter statement and had also filed M.P. No. 996 of 1990 u/s 24 of that Act claiming interim maintenance of Rs. 750/- per month. The respondent is said to be working in B.H.E.L. as Assistant, Grade II, and earning a salary of Rs. 2,700/- per month. It is stated on behalf of the petitioner that though her maintenance application was filed as early as in the November, 1989 together with an application for interim maintenance, the learned Family Court Judge, had not taken up maintenance petition for enquiry and had not passed any orders even on the interim maintenance petition. On the contrary the learned Judge had posted those applications along with the Matrimonial O.P. and it is urged that clubbing the maintenance proceedings,

which are to be summary in nature and intended to grant speedy and cheap relief to those in distress, with a full fledged Matrimonial O.P. for divorce, has placed the petitioner in a very difficult position unable to maintain herself being forced to attend the Courts periodically for no useful purpose. On these facts a direction is prayed for to the learned Family Court Judge to dispose of the maintenance petition as well as the petition for interim maintenance without tacking them on to the Matrimonial O.P.

2. Notice was sent to the respondent. Though notice has been served, he has failed to appear, nor is he represented by any Counsel.

3. Mr. V. Ashok, learned Counsel for the petitioner who reiterated the averments made in the petition would contend that the petitioner is uneducated and therefore, unfit for employment and is not being maintained even by her parents and as such the learned Judge should at least pass orders on the application for interim maintenance and dispose of the main petition for maintenance, and should not club them with the main Matrimonial O.P. which would result in dragging on matters.

4. As seen from the papers produced the maintenance petition has been filed on 21.11.1989. Along with that petition on the same day M.P. No 865/1989 has also been filed for an interim monthly maintenance of Rs. 300/-. Though one year and three months have passed, no orders have been passed even in the interim maintenance application. It is seen that the maintenance petition is posted along with the Matrimonial O.P. Section 125 Cr. P.C. is intended to serve a social purpose and to give speedy and cheap remedy to the persons who are unable to maintain themselves. Keeping the object of the provision in mind, the legislature has made the enquiry a summary one. Expanding the object of the provisions, the Supreme Court has held that interim maintenance, which is not even provided under Cr. P.C., should be granted in appropriate cases. While so, it would not, be proper to keep the maintenance proceedings pending for more than one year, without any progress and without passing orders on the application for interim maintenance and tacking it to the Matrimonial O.P. which is a full fledged enquiry and which will independently determine the status and rights of the parties on proved facts alleged by both parties. Even the application for interim maintenance taken out in the Matrimonial O.P. has not been ordered. Instead, the Diary extract shows that periodically the cases are posted together with no progress.

5. The Matrimonial O.P. could take its own time, but maintenance proceedings ought not to be taken along with the Matrimonial O.P., and kept pending. This would defeat the very purpose of Section 125, Cr. P.C. Interpreting these provisions, Courts have even taken the view that an order of maintenance passed u/s 125 Cr. P.C. will not be a bar to claim interim maintenance u/s 24 of the Hindu Marriage Act and vice versa. This has been laid down by this Court in *Vanaja v. Gopu*, 1990 T.L.N.J. 421. Considering the spirit behind all these provisions and the decisions of the Supreme Court as well as of this Court, the

learned Family Court Judge will first dispose of M.C. No. 483 of 1989 as also M.P. Nos. 865 of 1989 as expeditiously as possible without reference to the enquiry or disposal of the Matrimonial O.P.