

(2011) 06 MAD CK 0515

In the Madras High Court

Case No : Civil Revision Petition (PD) No. 494 of 2011

Mrs. Chitra

APPELLANT

Vs

Pugazhenthir @ Sasikumar

RESPONDENT

Date of Decision : 21-06-2011

Acts Referred:

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

Citation : (2011) 06 MAD CK 0515

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Advocate : C. Rajan, for the Appellant; V. Raghavan, for the Respondent

Judgement

R. Subbiah, J.—This civil revision petition has been filed as against the order and decretal order dated 1.7.2009 passed in I.A. No. 2283 of 2008 in O.P. No. 397 of 2008 on the file of the First Additional Principal Family Court, Chennai.

2. The brief facts which are necessary to decide the issue involved in the revision petition are as follows:

i. The Respondent herein has filed the original petition in O.P. No. 397 of 2008 as against the revision Petitioner herein for divorce and the same is pending on the file of the First Additional Principal Family Court, Chennai. The revision Petitioner has filed an application in I.A. No. 2283 of 2008 for interim maintenance u/s 24 of Hindu Marriage Act directing the Respondent to pay a sum of Rs. 10,000/- p.m from the date of the petition till the disposal of the divorce petition.

(ii) That apart, the revision Petitioner has also filed Maintenance case in M.C. No. 303 of 2006 u/s 125 of Code of Criminal Procedure for maintenance on the file of the I Additional Family Court, Chennai and the same was allowed by order dated 1.7.2009 by directing the Respondent herein to pay a sum of Rs. 4,500/- p.m to the revision Petitioner herein.

(iii) Since a sum of Rs. 4,500/- was ordered as maintenance in M.C. No. 303 of

2006, the application filed by the revision Petitioner in I.A. No. 2283 of 2008 filed u/s 24 of the Hindu Marriage Act, 1955 in O.P. No. 397 of 2008 for interim maintenance was dismissed. Subsequently, the order passed in M.C. No. 303 of 2006 directing the Respondent to pay a sum of Rs. 4,500/- p.m. as maintenance to the revision Petitioner was set aside by the order of this Court dated 15.07.2010 in Crl.R.C. No. 676 of 2010 filed by the Respondent and the matter was remitted to the Court below for fresh disposal.

(iv) The Present O.P. No. 397 of 2008 filed by the husband for divorce is pending for disposal before the I Additional Family Court, Chennai. The present civil revision petition has been filed to set aside the order of dismissal dated 1.7.2009 made in I.A. No. 2283 of 2008 filed by the wife u/s 24 of the Hindu Marriage Act, 1955 and to restore the same on the file of the I Additional Family Court, Chennai and to dispose of the same afresh on merit.

3. The learned Counsel for the Respondent/husband has submitted that the maintenance case in M.C. No. 303 of 2006 filed u/s 125 of Code of Criminal Procedure is almost in the completion stage and the maintenance that has to be awarded to the revision Petitioner/wife will be decided in that application, and therefore, there is No. need to set aside the order of dismissal dated 1.7.2009, passed in I.A. No. 2283 of 2008 u/s 24 of the Act and to restore the said application on file.

4. Per contra, the learned Counsel for the Petitioner/wife by relying on the decisions reported in Parchuri Rajya Lakshmir Vs. Parchuri Viswa Sankara Prasad, decision reported in Sudeep Chaudhary Vs. Radha Chaudhary, submitted that the interim alimony that has to be awarded u/s 24 of the Act is independent in nature and payable apart from the maintenance awarded u/s 125 of Criminal Procedure code. The Maintenance awarded u/s 125 of Code of Criminal Procedure can be adjusted against the amount awarded in matrimonial proceedings. When that being the legal position, the revision Petitioner is entitled to agitate the petition u/s 24 of the Hindu Marriage Act, 1955.

5. At this juncture, it was brought to the notice of this Court that the revision Petitioner has filed another application u/s 24 of the Hindu Marriage Act in I.A. No. 3555 of 2010 in O.P. No. 52 of 2010 filed by her for restitution of conjugal rights. But, the learned Counsel for the revision Petitioner has filed an affidavit before this Court today i.e. on 21.6.2011, stating that she has undertaken to withdraw the I.A. No. 3555 of 2010 filed u/s 24 of the Hindu Marriage Act, 1955 and the same is recorded.

6. In view of the submission made by the learned Counsel on either side, I am of the opinion that Section 24 application is independent in nature i.e. the amount awarded u/s 125 of the Code of Criminal Procedure is independent of the amount awarded u/s 24 of the Act. In such circumstances, No. infirmity can be found in setting aside the order of dismissal passed in I.A. No. 2283 of 2006 and to restore the same on file. Hence, the order passed in I.A. No. 2283 of 2006 in O.P.

No. 397 of 2008 on the file of the Additional Principal Family Court, Chennai is hereby set aside. The Court below is hereby directed to restore the said application on file and dispose of the same on merits.

7. The revision petition is disposed of accordingly. No costs.