
(2017) 05 MP CK 0070
In the Madhya Pradesh High Court
Case No : 2815 of 2016

Ravi Saxena

APPELLANT

Vs

State of Madhya Pradesh & others.

RESPONDENT

Date of Decision : 01-05-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 125](#) — Order for maintenance of wives, children and parents
[Divorce Act, 1869](#), [Section 22](#), [Section 36](#) - Bar

Citation : (2017) 05 MP CK 0070

Hon'ble Judges : C.V. Sirpurkar

Bench : Single Bench

Advocate : Sushri C.V. Rao, Vishal Dhagat

Judgement

1. This criminal revision is directed against the order dated 06.10.2016 passed by the Court of Principal Judge, Family Court, Katni in Miscellaneous Case No.112/2015, whereby it has been held that the petitioner husband Samuel Walter owes as sum of Rs.1,58,000/- to the respondent daughter Jasmine and wife Violet by way of maintenance.

2. The facts necessary for disposal of this criminal revision may briefly be stated thus: Petitioner Samuel filed a civil suit (Civil Suit No.7-A/2014) against the respondent Jasmine for divorce under Section 22 of the Indian Divorce Act, 1869. In that civil suit, by order dated 30.07.2012, the Court directed the petitioner Samuel to pay Rs.5,000/- per month by way of interim maintenance to the respondent Violet.

3. Subsequently, respondents Jasmine and Violet filed a petition under Section 125 of the Cr.P.C. for maintenance against the petitioner Samuel on 16.05.2012 in the Court of JMFC, Katni. By order dated 06.03.2013 passed by the JMFC, Katni, the petitioner Samuel was directed to pay Rs.3,000/- per month to Jasmine and Rs.2,000/- per month to Violet by way of interim maintenance. It

was further directed in the order dated 06.03.2013 that the amount of interim maintenance awarded under Section 125 of the Cr.P.C. shall be adjustable against the amount of interim maintenance being received by Violet under the provisions of Indian Divorce Act, 1869.

4. Later, the case under Section 125 of the Cr.P.C. was transferred to the Court of Principal Judge, Family Court, Katni and was registered as Miscellaneous Case No.171/2014. By final order dated 16.02.2015, learned Principal Judge, Family Court, directed the petitioner Samuel to pay maintenance at the rate of Rs.5,000/- per month to the respondents from May, 2012 till December, 2014 and Rs.3,000/- per month to respondent Jasmine and Rs.3,000/- to respondent Violet from January, 2015. This amount was payable to daughter Jasmine till she attained majority and to respondent wife Violet throughout her life unless otherwise directed by the Court. It was further directed that the amount of interim maintenance already shall be adjusted against the amount payable finally.

5. In the light of the aforesaid two orders, the stand that has been taken by the petitioner Samuel is that the interim allowance of Rs.5,000/- per month payable by the petitioner Samuel to respondent Violet under Indian Divorce Act, is adjustable from the interim and final amount of maintenance payable under the order dated 16.02.2015; whereas, the learned counsel for the respondents submits that the aforesaid amount is not adjustable as there is no mention of adjustment of amount of maintenance as above, in the final order dated 16.02.2015. Learned counsel for the respondents has contended that the final order of maintenance has overriding effect upon the interim order of maintenance and since there is no mention of the amount payable under the provisions of the Indian Divorce Act in the final order dated 16.02.2015, the maintenance payable under both the provisions i.e., under the Indian Divorce Act and Section 125 of the Cr.P.C., are separately recoverable.

6. A perusal of the record reveals that the relief clause of interim order dated 30.07.2012 passed by the Court of First Additional District Judge, Katni under Section 36 of the Indian Divorce Act reads as hereunder: "VERNACULAR MATTER OMITTED"

7. Relief clause of order dated 06.03.2013 passed by the Court of JMFC, Katni in the proceedings under Section 125 of the Cr.P.C. reads as hereunder: "VERNACULAR MATTER OMITTED"

8. The relevant part of the final order dated 16.02.2015 passed by the Court of Principal Judge, Family Court, Katni in Miscellaneous Case No.171/2014 is also reproduced as hereunder:- "VERNACULAR MATTER OMITTED"

9. In this regard, learned counsel for the petitioner placing reliance upon the judgment rendered by the Supreme Court and this High Court respectively in the cases of Captain Ramesh Chander Kaushal vs Mrs. Veena Kaushal, AIR 1978 SC 1807 and Ashok Singh Pal Vs. Smt. Manjulata, AIR 2008 MP 139 has contended that though the Court is competent under Section 125 of the Cr.P.C. and Section

24 of the Hindu Marriage Act to award interim maintenance separately, while passing the order under one of these provisions, the earlier order passed under the other provision, has to be taken into consideration. Accordingly, the Family Court has directed in the final order dated 16.02.2015 that the amount of interim maintenance paid by the petitioner shall be adjusted against the amount of final maintenance payable by the petitioner.

10. It may be noted that during the execution, the Executing Court had issued a recovery warrant against the petitioner on 13.04.2016. The petitioner challenged that order before this Court in Cr.R. No.255/2016. A co-ordinate Bench of this Court, by order dated 10.08.2016, had directed the Executing Court to record a finding with regard to arrears of maintenance allowance taking into consideration the amount payable by the petitioner and the amount already paid by him. Pursuant to order dated 10.08.2016, learned Principal Judge, Family Court passed the impugned order dated 06.10.2016, whereby on due consideration of all the orders passed against the petitioner, it was held that the amount payable under the provisions of Indian Divorce Act and the amount payable under Section 125 of the Cr.P.C. were separately recoverable. As such, an amount of Rs.1,58,000/- was still found to be outstanding on 06.10.2016 against the petitioner. The aforesaid order dated 06.10.2016, is subject matter of challenge in this criminal revision.

11. It is true that the Court has jurisdiction to award separate interim maintenance under the provisions of personal law of the parties as well as under Section 125 of the Cr.P.C. It is also true that it is incumbent upon the Court to take into consideration any earlier orders of interim maintenance passed in favour of Wife and Children. While passing the final order of maintenance under Section 125 of the Cr.P.C., learned Principal Judge, Family Court, Katni does not seem to have taken into account the earlier order of interim maintenance passed under the provisions of Indian Divorce Act; however, even if it is assumed for the sake of arguments that the final order of maintenance dated 16.02.2015 is deficient in that regard, the same cannot be challenged in execution proceedings. Ordinarily, in execution proceedings, the executing Court cannot go behind the order under execution. In the order dated 16.02.2015, there is no mention of interim order of maintenance passed under the Indian Divorce Act. There is only one caveat in paragraph no.15 (c) that the amount already paid by way of interim maintenance, shall be adjusted against the amount finally payable. On bare perusal of relief clause no.15 in order dated 16.02.2015, it is clear that no adjustment has been granted in respect of the interim maintenance payable under the Indian Divorce Act. The final order of maintenance has overriding effect upon the interim order of maintenance. Though, there was a mention of the amount payable under the Indian Divorce Act, in the interim order of maintenance dated 06.03.2013, no such caveat can be read into the final order of maintenance dated 16.02.2015. Thus, the Family Court was justified in holding that the petitioner cannot claim adjustment of interim maintenance being paid by him under the Indian Divorce Act and both the allowances are separately

recoverable. As such, the impugned order does not suffer from any illegality, irregularity or impropriety warranting interference in the revisionary jurisdiction of the High Court.

12. Consequently, this criminal revision deserves to be and is accordingly dismissed. Certified copy as per rules.