

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.07.2015**

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**

CRL.RC.(MD)No.453 of 2014

and

M.P.No.1 of 2014

B.Prakash : Petitioner

Vs.

1.Deepa

2.Minor Harini : Respondents

PRAYER: Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records in Crl.A.No.17 of 2012, dated 31.01.2014, on the file of the Second Additional District and Sessions Judge, Trichy, modifying the order passed in M.C.No.158 of 2009, on the file of the learned Judicial Magistrate No.II, Trichy and revise the same.

[Date of reserving the Judgment - 01.07.2015]

[Date of pronouncing the Judgment -]

For Petitioner : Mr.N.Mohideen Basha

For Respondents : Mr.M.Karunanithi
: Mr.T.Lajapathi Roy
Amicus Curiae

ORDER

The petitioner is the husband of the first respondent and the father of the second respondent. The respondent filed M.C.No.107 of 2008, before the learned Chief Judicial Magistrate, Thiruchirappalli, claiming maintenance under Section 125 of the Code of Criminal Procedure, [hereinafter referred to as "the Act"]. The learned Chief Judicial Magistrate, by order dated 19.06.2009, passed an order, directing the petitioner to pay a sum of Rs.500/- per month to each respondent herein towards their maintenance. As against the same, the respondents filed CrI.Rc.No.88 of 2009. By order dated 23.05.2011, the learned Additional District and Sessions Judge, Tiruchirappalli, modified the order of the learned Chief Judicial Magistrate and directed the petitioner to pay a sum of Rs.2,500/- per month to each respondent herein towards their maintenance. The petitioner claims that he has been paying the said amount without any default. While so, the respondent filed M.C.No.158 of 2009, on 20.01.2009, under Section 20 r/w Section 12 of the Protection of Women from Domestic Violence Act, 2005, [hereinafter referred to as "the Act"], claiming various reliefs under the said Act, including monetary relief towards their maintenance. The learned Judicial Magistrate, by order dated 31.01.2012,

directed the petitioner to pay a sum of Rs.2,000/- per month to the first respondent and a sum of Rs.1,500/- to the second respondent towards their maintenance. Challenging the said order, the petitioner filed Crl.A.No.17 of 2012. The learned Second Additional District and Sessions Judge, by order dated 31.01.2014, confirmed the order of the learned Judicial Magistrate, directing the payment of maintenance. The said order is under challenge in this Criminal Revision Case.

2. I have heard Mr.N.Mohideen Basha, the learned counsel appearing for the petitioner, Mr.T.Lajapathi Roy, the learned Amicus Curiae, appointed by this Court to argue the case on behalf of the respondents and perused the records carefully.

3. The foremost contention of the learned counsel for the petitioner is that a Magistrate, acting under Section 20 of the Act, has got power to grant maintenance under Section 125 of the Code. According to him, Section 125 of the Code and Section 20 of the Act serve two different purposes and orders could be passed under these provisions on two different considerations. These two provisions, according to the learned counsel, are mutually exclusive.

4. But, Mr.T.Lajapathi Roy, the learned *Amicus Curiae* appointed by this Court, would submit that under Section 20(1)(d) of the Act, a Judicial Magistrate is fully empowered to pass an order for maintenance also. The learned counsel would further submit that Section 20 of the Act and Section 125 of the Code are not mutually exclusive and they are complementary to each other. He would further submit that an aggrieved party has got option either to go before the Magistrate under Section 125 of the Code or under Section 20 of the Act, claiming maintenance.

5. Before entering into any further discussion, let us have a quick look into the relevant provisions.

6. Section 125 of the Code is reads as follows:-

"125. Order for maintenance of wives, children and parents.

(1) If any person leaving sufficient means neglects or refuses to maintain-

(a) His wife, unable to maintain herself, or

(b) His legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) His legitimate or illegitimate child (not being a

married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) His father or mother, unable to maintain himself or herself,

A Magistrate of' the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of' sufficient means.

Explanation. For the purposes of this Chapter.

(a) Minor means a person who, under the provisions of the Indian Majority Act, 1975 (9 of 1875) is deemed not to have attained his majority;

(b) "Wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Such allowance shall be payable front the date of the order, or, if so ordered, from the due of the application for maintenance.

(3) Person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for whole, or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one

month or until payment if sooner made;

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance from her husband under this section she is living in adultery, or if, without any sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to, live with her, husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order".

7. Section 20 of the Act reads as follows:-

"20. Monetary reliefs.- (1) While disposing of an application under sub section (1) of section 12, the Magistrate may direct the respondent to pay

monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,-

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973, (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly

payments of maintenance, as the nature and circumstances of the case may require.

(4). The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

6. Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the Court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent".

8. A cursory reading of Section 125 of the Code would go to show that a wife is entitled for maintenance upon proof that the

husband has neglected or refused to maintain her and further that she is unable to maintain herself. If these three facts are proved, then, she is entitled for an order for maintenance against her husband.

9. If we look into Section 20 of the Act, sub-section (1) states that an aggrieved is entitled for monetary relief. The said monetary relief could be ordered to meet the expenses incurred by the loss suffered by the aggrieved person. The term "monetary relief" has been defined in Section 2(k) of the Act, which reads as follows:-

"monetary relief" means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing *of* an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence."

10. The term "aggrieved" is defined in Section 2(a) of the Act, which reads as follows:-

"aggrieved person" means any woman who is, or has been, in a domestic relationship with the

respondent and who alleges to have been subjected to any act of domestic violence by the respondent."

11. In order to get an order for monetary relief, under Section 20 of the Act, first of all, the claimant should be an aggrieved person as a result of the domestic violence. The term "domestic violence" is defined in Section 2(g) of the Act, which states that the domestic violence has the same meaning as assigned to it in Section 3 of the Act.

12. Section 3 of the Act reads as follows:-

"3. Definition of domestic violence.- For the purposes of this Act, any act omission or commission or conduct of the respondent shall constitute domestic violence in case it-

(a) harms or injures or endangers the health, safety, life, limb or well-being whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any

other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person".

13. Now, the question is as to whether the wife, who has been neglected by her husband or refused to be maintained, is aggrieved person, as defined in Section 2(a) of the Act. In other words, whether such neglect or refusal by the husband would amount to domestic violence as defined in Section 3 of the Act.

14. As per the definition of the term "domestic violence", economic abuse shall also constitute the domestic violence. The term "economic abuse" has been defined by way of Explanation (1) (iv) of Section 3 of the Act, which reads as follows:-

"(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable

under an order of a Court or otherwise or which the aggrieved person requires out of necessity including, but not limited, to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance.

(b).disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c)prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household."

15. For the wife, maintenance paid by way of maintenance amount payable by the husband is a financial resource for her. Similarly, the denial of household necessities of the wife is also an

economic abuse. The husband is bound to maintain the wife. If he neglects or fails to maintain, the wife is deprivation of her financial resources to maintain herself and to meet her household necessities. Denial of either of these two would amount to economic abuse. Such economic abuse will amount to domestic violence. The wife, who is the victim of such domestic violence, is, therefore, entitled for monetary relief under Section 20 of the Act.

16. The monetary relief to be ordered under Section 20 of the Act, should be to meet the expenses incurred and the loss suffered by the aggrieved as a result of the domestic violence. The loss suffered is nothing but the loss of financial resources to be paid by the husband towards her maintenance. Thus, if the husband neglects the wife or refuses to maintain her, the said act of the husband surely amounts to domestic violence and therefore, the aggrieved wife is entitled for monetary relief and such monetary relief may include, but not limited to the maintenance for the wife as well as to her children. The monetary relief paid by way of maintenance can be an order under Section 125 of the Code, which is evident from a plain reading of Section 20(1)(d) of the Act. Thus, it is crystal clear that a wife, who has suffered domestic violence by the act of the husband in neglecting or refusing to maintain her is

entitled to approach the Judicial Magistrate seeking an order under under Section 125 of the Code, which itself is a monetary relief under Section 20 of the Act. Any such maintenance order made under Section 20 of the Act is appealable to the Court of Sessions under Section 29 of the Act.

17. The next question, which arises for consideration, is as to whether an order for maintenance made by a Magistrate under Section 125 of the Code, shall be a bar for a Magistrate acting under Section 20 of the Act to pass an order for maintenance. In this regard, again, we should have a look into the Section 20(1)(d) of the Act, which states that the monetary relief granted under Section 20 of the Act may include an order for maintenance, in addition to an order of maintenance under Section 125 of the Code. Thus, it is crystal clear that a previous order for maintenance passed by a Magistrate under Section 125 of the Code, is not a bar for a Magistrate acting under Section 20 of the Act to pass yet another order granting monetary relief under Section 20 of the Act, by way of maintenance under Section 125 of the Code. Here, it needs to be noted that the subsequent order made under Section 20 of the Act is not in any way in modification or variation of the earlier order made under Section 125 of the Code by a Magistrate.

18. If the wife wants to modify an order made under Section 125 of the Code, seeking enhancement of the maintenance amount, the only option available for her is to file a petition under Section 127 of the Code before the same Magistrate, who passed the order. In other words, the order made under Section 125 of the Code can be modified or varied only by the same Magistrate, who passed the earlier order. An order made under Section 125 of the Code for maintenance by one Magistrate cannot be varied or modified by a Magistrate acting under Section 20 of the Act. Therefore, it should be noted that a monetary relief granted towards maintenance under Section 20 of the Act may be not in modification of the previous order for maintenance passed under Section 125 of the Code, but it may be in addition to the said order for maintenance passed under Section 125 of the Code. If an order has already been made under Section 125 of the Code for maintenance, there can be no doubt that the wife had proved either neglect or refusal on the part of the husband. If the wife wants an order under Section 20 of the Act, in addition to the order under Section 125 of the Code, she has to prove fresh acts of the husband constituting the domestic violence subsequent to the passing of the earlier order under Section 125 of the Code. She cannot rely on the acts of the husband constituting domestic violence, which happened prior to the

passing of the order under Section 125 of the Code. For getting an order under Section 20 of the Act, in addition to the earlier order under Section 125 of the Code, the wife should plead and prove that subsequent to the said order made under Section 125 of the Code, the husband had caused domestic violence and on account of the same, she had suffered loss and thus, she is entitled for additional amount as maintenance. Thus, it is manifestly clear that a previous order made under Section 125 of the Code is not a bar for an aggrieved wife to approach a Magistrate under Section 20 of the Act, for monetary relief as an additional relief of maintenance, provided subsequent to the passing of the earlier order under under Section 125 of the Code, the husband has committed domestic violence resulting loss to the wife.

19. In this regard, we may also take note of Section 36 of the Act, which states that the provisions of this Act shall be in addition to and in derogation of the provisions of any other law, for the time being in force, which means Section 20 of the Act is not in derogation of Section 125 of the Code. It also needs to be clarified that as and when there is neglect or refusal on the part of the husband to maintain the wife, she has got option either to seek remedy under Section 125 of the Code or under Section 20 of the

Act. If she elects to make a claim under Section 125 of the Code, on the same cause of action, she cannot, simultaneously, make a claim under Section 20 of the Act and vice versa. On the said cause of action, if the Magistrate dismisses the claim made by the petitioner under Section 125 of the Code, then, on the same set of allegation and cause of action, the wife cannot change her course and make a claim under Section 20 of the Act. Similarly, having elected to approach the Court under Section 20 of the Act, after having failed in her attempt to get maintenance, on the same set of allegations and cause of action, she cannot make a fresh allegation under Section 125 of the Code for maintenance. Having chosen one forum, if the aggrieved wants to approach the other forum, such approach could be made only on fresh grounds, which occurred subsequent to the order passed by the other forum.

20. In the case on hand, the respondents filed M.C.No.101 of 2008, on the file of the learned Chief Judicial Magistrate, Trichirappalli, on 19.06.2009. The revision filed by the petitioner for enhancement of the maintenance amount was disposed of by the learned Second Additional District and Sessions Judge, Trichirappalli, on 23.05.2011. Thus, the said proceedings, under Section 125 of the Code, was under contest from the year 2008 till

23.05.2011. When the same was so pending, the petitioner, simultaneously, filed M.C.No.158 of 2009, before the learned Judicial Magistrate, No.II, Trichirappalli, under Section 20 of the Act, on 20.01.2009, i.e., even before the order of the learned Chief Judicial Magistrate in M.C.No.101 of 2008. Thus, the respondents had approached two different forums, viz., the learned Chief Judicial Magistrate, Trichirappalli, as well as the learned Judicial Magistrate, No.II, Trichirappalli, under Section 125 of the Code as well as under Section 20 of the Act, on the same set of allegations and cause of action. This, in my considered view, is not legally permissible and the same would amount to clear abuse of process of Court. The order under challenge was not made on any fresh grounds constituting the domestic violence, which occurred subsequent to M.C.No.101 of 2008.

21. In such view of the matter, the impugned order is liable to be set aside. If the respondents have got reasons to seek modification of the earlier order made under Section 125 of the Code, it is always open for them to approach the very same Magistrate under Section 127 of the Code for such modification so as to have the maintenance amount enhanced or if the respondents have got any fresh grounds, constituting the domestic violence,

which happened subsequent to the passing of the order under Section 125 of the Code, they are at liberty to approach the Magistrate under Section 20 of the Act to get an order for maintenance in addition to an order of maintenance already passed under Section 125 of the Code.

22. In view of the above, this Criminal Revision Case is allowed and the order of the learned Judicial Magistrate No.II, Thiruchirappalli, made in M.C.No.158 of 2009, dated 31.01.2012, is set aside, however, with liberty, as indicated above. Consequently, connected Miscellaneous Petition is closed.

28.07.2015

Index :Yes/No
Internet :Yes/No
NB

S.NAGAMUTHU, J.

NB

To

- 1.The Second Additional District and Sessions Judge, Trichy.
- 2.The Judicial Magistrate No.II, Trichy.
- 3.The Chief Judicial Magistrate, Trichy.

**PRE-DELIVERY ORDER MADE IN
CRL.RC.(MD)No.453 of 2014**

DATED -28.07.2015