

ORDER ON I.A.
UNDER SECTION 127 of Cr.P.C.

The L/Advocate for the respondent has filed application U/sec.127(3)(b) of Cr.P.C., seeking of modification of the order.

2. In the application it is stated that the respondent has appeared after warrant issued in the case. The respondent has preferred the petition against the petitioner No.1 seeking for divorce on the ground of cruelty in M.C.No.53/2015. The said petition after inquiry was allowed and the decree of divorce was granted by dissolving the marital relationship between the petitioner No.1 and respondent by order dated: 28.3.2018. Moreover, the Hon'ble Court while granting decree of divorce had directed the respondent in this case to pay Rs.2,00,000/- to the petitioners i.e. Rs.1,00,000/- each as maintenance and the respondent in this case has complied with the order. Therefore, he seeks for modification of the order, cancelled the

order of maintenance passed against the respondent by recalling warrant against him.

3. The learned advocate for the petitioner has filed objections to the said application and in the objections, it is stated that the order of maintenance granted in this case is U/sec.125 of Cr.P.C., and permanent alimony is granted under provisions of Hindu Marriage Act and therefore, the application U/sec.127 of Cr.P.C., is not maintainable and therefore, he seeks for dismissal of the application.

4. Heard L/Advocate for the respondent and the petitioner.

5. The following points arise for my consideration

A) Whether I.A. Under Section 127 of Cr.P.C. filed by L/Advocate for the respondent deserves to be allowed?

B) What Order?

6. My answer to the above points are as under,

- A) In the Negative
B) As per final order,
For following

REASONS

7. This petition is filed U/sec.128 of Cr.P.C., by the petitioners seeking for recovery of Rs.72,000/- maintenance amount from the respondent.

8. In the petition it is stated that the petitioners had preferred Cril. Misc. No.189/2013 which came to be disposed off on 7.2.2015 by granting of Rs.2,000/- per month maintenance to the petitioner No.1 and Rs.1,000/- per month maintenance to the petitioner No.2 totaling Rs.3,000/- per month from the date of petition. The petition filed on 27.6.2013 and an amount of Rs.72,000/- is due from the respondent and hence, he seeks for recovery of the said amount.

9. The learned advocate for the respondent submits that already divorce decree is granted and permanent alimony is

granted in the said matter and hence there are no grounds for again ordering for payment of maintenance to the petitioners and therefore seeks for allowing of the application. In support of his contention relies upon the Certified copy of Judgment passed in M.C.No.53/2015, dated: 28.3.2018 and Memo dated: 25.9.2018, whereby, he has complied with the order of payment of permanent alimony of Rs.2,00,000/- as per order in M.C. petition.

10. It is to be noted here that the order in Cril.Misc. Petition No.189/2013 was disposed off on 7.1.2015 and M.C.No.53/2015 was filed before Hon'ble Senior Civil Judge, Sirsi seeking for divorce on 04.07.2015 which is after the order was passed in Criminal Miscellaneous petition. On perusal of judgment passed in M.C.No.53/2015 it can be seen that Rs.2,00,000/- permanent alimony was granted to petitioners together and the respondent has complied with the said order and has deposited Rs.2,00,000/- by

way of D.D. The only question which arises the consideration is whether the payment of said permanent alimony by the respondent in M.C. petition, absolves him of the responsibility of payment of maintenance order already passed in this case U/sec.125 of Cr.P.C. In this regard, if we perused the Judgment of **Hon'ble High Court of Bombay reported in 2000(2) Maharashtra Law General Page 1 in the case of Leena Chawan Vs. Chandrakant Chawan, the Hon'ble High Court of Bombay has clearly laid down at paragraph No.8** as under:

“ In spite of the fact that there were an order U/sec.125 of Cr.P.C., the matrimonial court U/sec.25 of Hindu Marriage Act, by way of permanent alimony passed an order for amount it is obviously in addition to the amount awarded U/sec.125 of Cr.P.C.”

11. On perusal of the said dictum the Hon'ble High Court of Bombay and applying it facts and circumstances of the case, it can be seen that the Order U/sec.125 of Cr.P.C., was passed and

thereafter, petition seeking for divorce was filed. On perusal of the judgment in M.C.No.53/2015 no where it can be seen that there was any observation regarding order passed by this court U/sec.125 of Cr.P.C. Therefore, in the facts and circumstances of the case, as the petition seeking for divorce is filed after final order is passed in Cril.Misc. No.189/2013 and there was already order in force and no observation made with the said order. I am of the opinion that there is no embargo for recovery of maintenance granted by this court U/sec.125 of Cr.P.C. It is further to be noted here that maintenance provisions U/sec.125 of Cr.P.C., is provided on a different footing than that of permanent alimony U/sec.25 of Hindu Marriage Act and the order of permanent alimony U/sec.25 of Hindu Marriage Act, will not be an embargo for recovery of maintenance already granted U/sec.125 of Cr.P.C., and therefore, I proceed to pass the following:

ORDER

I.A. filed U/sec.127(3)
(b) of Cr.P.C., filed by the
learned advocate for the
respondent is hereby
dismissed.

For necessary steps
call on 25.2.2019.

Addl. J.M.F.C. Court, Karwar.

Order pronounced in the
open court,
vide separate Order on
main petition

ORDER

Addl. J.M.F.C. Court, Karwar.