

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-06-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1363 of 2014
and M.P.Nos.1 of 2014 & 1 of 2015

Kumar @ Stephen

.. Petitioner

Versus

Jeniffer

.. Respondent

Criminal Revision Case filed under Section 397 read with Section 401 of Cr.P.C. against the order dated 19.11.2014 passed in CrI.M.P. No. 6146 of 2014 in M.C.No.21 of 2014 on the file of the Judicial Magistrate-cum-District Munsif, Neyveli.

For Petitioner : No Appearance

For Respondent : Mr.A.Kanaka Velappan

ORDER

This Criminal Revision Case is filed by the petitioner/husband against the order passed by the learned Judicial Magistrate-cum-District Munsif, Neyveli, in the petition filed under Section 23 of Domestic Violence Act in CrI.M.P. No. 6146 of 2014 in M.C.No.21 of 2014, dated 19.11.2014, giving interim custody of the child named Aswin Marx to the respondent/complainant/wife.

2. The petitioner/husband at the time of filing this revision has filed a petition seeking to grant stay and this Court while admitting the revision has granted an order of interim stay on 23.12.2014, thereafter, the respondent herein/wife has filed a vacate stay petition. When the vacate stay petition was taken on several occasions, continuously, there was no representation for the revision petitioner. On the last hearing also, the revision petitioner did not appear and therefore, the matter was directed to be listed on 23.06.2015 under the caption, "for dismissal". Even today, when the main revision is taken, there is no representation for the revision petitioner. In the judgment of the Hon'ble Apex Court reported in (2013)3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, it has culled out certain principles and in paragraph No.19 has held as follows:-

"19. From the aforesaid decision in Bani Singh vs. State of Uttar Pradesh, reported in (1996) 4 SCC 720, the principles that can be culled out are:

19.1. That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;

19.3. That the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. That it can dispose of the appeal after perusing the record and judgment of the trial court;

19.5. That if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. That if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."

3. In the light of the principles culled out in the judgment of the Hon'ble Apex Court cited supra, it is crystal clear that the Court can decide the matter even in the absence of the petitioner or his counsel, but, only criteria is that the case should be decided on merits in the absence of the petitioner and the Court cannot dismiss an appeal for non-prosecution simpliciter without examining the case on merits. In the light of the decision cited supra, the main Criminal Revision Case itself is taken up and disposed of on merits, after hearing the learned counsel appearing for the respondent and also after perusing the materials available on record.

4. Mr.A.Kanaka Velappan, learned counsel appearing for the respondent submitted that the respondent/complainant has been granted only interim custody of the child, aged 2 ½ years and she is the mother, therefore, she is the lawful guardian. He would further point out that even after the order was passed by the Lower Court granting interim custody of the child to the respondent, till date, the petitioner/husband has not chosen to give the interim custody of the child to the respondent/complainant and now, the petitioner is absconding.

5. On a perusal of the grounds raised in the revision, it is seen that the main ground raised by the petitioner is that the respondent/complainant with an ulterior motive to collect money from the petitioner has filed the petition seeking to grant interim custody of the child, when the divorce petition is pending.

6. In my considered opinion, merely because, there is a divorce petition pending that cannot be a reason to expel the genuine nature of the mother to get interim custody of the child, therefore, the order passed by the Lower Court is correct and hence, I do not find any reason to interfere with the reasoned order passed by the Lower Court, dated 19.11.2014, especially, when the petitioner has not made

out any ground to set aside the award.

7. In the result, this Criminal Revision Case is dismissed and the order dated 19.11.2014 passed in CrI.M.P.No.6146 of 2014 in M.C. No. 21 of 2014 on the file of the Judicial Magistrate-cum-District Munsif, Neyveli, stands confirmed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

True Copy

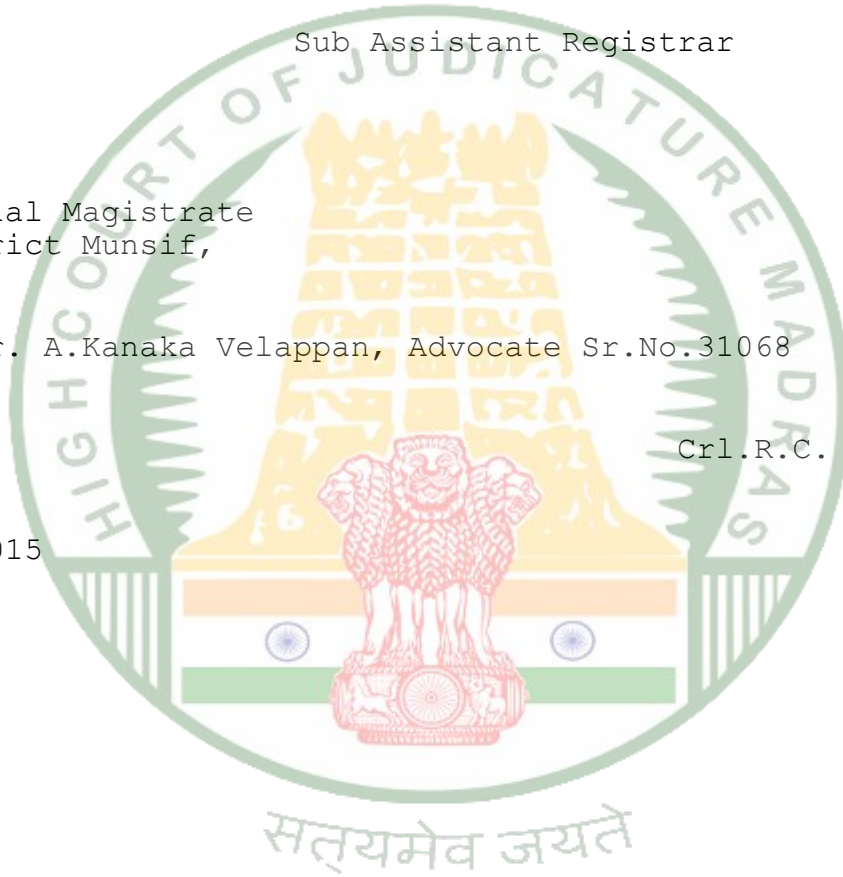
Sub Assistant Registrar

paa
To
The Judicial Magistrate
-cum-District Munsif,
Neyveli.

1 cc to Mr. A.Kanaka Velappan, Advocate Sr.No.31068

CrI.R.C. No. 1363 of 2014

cnr (Co)
pmk.3.7.2015



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