

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

and

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Contempt Petition No.2549 of 2015

Kailasanath.L .. Petitioner

vs.

Daksha S.Rao .. Respondent

Prayer : Petition filed under Section 11 of the Contempt of Court Act, 1971 to summon the respondent for willful disobedience of the order of this Court passed in H.C.P.No.1542 of 2014 dated 09.09.2014 and punish the respondent for the same.

For Petitioner : Mr.P.S.Raman,
Senior Counsel
for Ms.Pushpa Menon

ORDER

[Order of the Court was made by M.JAICHANDREN, J.]

This Contempt Petition has been filed praying that this Court may be pleased to punish the respondent, for having committed contempt of the order passed by this Court, on 09.09.2014, in H.C.P.No.1542 of 2014.

2.The learned Senior Counsel appearing on behalf of
<https://hcservices.ecourts.gov.in/hcservices/>
the petitioner has submitted that this Court has passed an

order, on 09.09.2014, in H.C.P.No.1542 of 2014 which reads as follows:-

"This Habeas Corpus Petition has been filed by the wife seeking production of her two minor children before this Court, who are in the custody of the second respondent/husband/father of the minor children.

2.This Court by an order dated 11.07.2014, after discussing with both the parties and in due consideration of the welfare of the two minor children, advised the father to hand over two minor children to mother/the petitioner herein and accordingly the two minor children were put in the custody of the petitioner/mother on 11.07.2014. Father was given visiting rights to see the minor children.

3.After a few orders having been passed by this Court with regard to the temporary visiting rights of the father/second respondent, both the parties agreed before this Court to file a petition mutually under Section 13B of the Hindu Marriage Act, 1955 (for brevity "the Act") for divorce before the Family Court, Chennai. As per the undertaking given by them before this Court in the last hearing, today, a draft petition prepared under

Section 13B of the Act has been produced before this Court for perusal.

4.Mr.K.Vijayan, learned Senior Counsel appearing for the petitioner/wife and Mr. V. Karthik, learned counsel appearing for the second respondent/husband, would state that as agreed upon by them, the Section 13B petition for divorce produced today would be filed before the Family Court soon and by recording this fact, this petition may be closed. The parties present would also state the same.

5.The learned counsel appearing on either side would further add that both the parties viz., the husband and wife have agreed to abide by all the terms and conditions stipulated in the Section 13B petition in letter and spirit. Besides that, it is represented on the side of the wife that apart from the conditions agreed to for the visiting rights of father to see the minor children in Clause 7 of the Section 13B petition, the father of the minor children could at any time visit the minor children, after prior intimation to the wife. The wife who is present before this Court agrees for such a condition. It is also agreed by both the parties that, for any alteration or modification of the

clauses and conditions agreed to between them in Section 13B petition, it is open to them to approach the appropriate Court in future.

6. In view of the Section 13B mutual petition agreed to be filed before the Family Court, Madras, the wife has agreed before us to withdraw the two criminal cases filed by her against her husband i.e. The one filed under the Domestic Violence Act in C.C.No.7523/2014 before the II Metropolitan Magistrate, Egmore, Chennai and the other one filed under Section 498A before All Women Police Station, registered in Cr.No.1/2014. The wife undertakes that immediate steps will be taken by her for withdrawal of those two cases. Her undertaking is recorded.

7. It is also stated by the parties that the divorce case filed in a court at Alleppy shall also be withdrawn in view of the Section 13B petition being filed before the Family Court in Madras. The submission made in this regard is recorded.

8. Thus, by recording the submission made by the learned counsel appearing for the parties and the parties themselves who are present before this Court, this Habeas Corpus

petition is closed in the above terms.

9. The draft Section 13B petition,

to be filed before the Family Court, Chennai, produced on the side of the parties, shall also form part and parcel of this order."

3. According to the petitioner, a consent order has been passed, on 11.07.2014, pursuant to which, the custody of the minor children had been given to the mother. Thereafter, an order had been passed by this Court, on 09.09.2014, recording the fact that the respondent had agreed to withdraw the two criminal cases, filed by her, against the petitioner, in C.C.No.7523 of 2014 before the learned II Metropolitan Magistrate, Egmore, Chennai, and the case registered before the All Women Police Station, in Crime No.1/2014. It had also been recorded that the parties would also withdraw the case filed for divorce in a Court at Alleppy, in view of the Section 13B Petition filed before the Family Court, Chennai. Recording the same, this Court had closed the Habeas Corpus Petition.

4. While doing so, a direction had been issued by this Court, to file a Draft Section 13B Petition to be filed before the Family Court, Chennai. It had also been stated that Section 13B petition to be filed before the Family Court, Chennai, shall form a part and parcel of the order passed by this Court, on 09.09.2014.

the petitioner had submitted that the respondent had not withdrawn the criminal cases filed against the petitioner as agreed to by her and the custody of the minor children has also not been given to her. The petition filed by the respondent has also not been withdrawn. Thus, the respondent has committed contempt of the order passed by this Court, dated 09.09.2014. Thus, according to the petitioner, the respondent is liable to be punished for the act of contempt of Court.

6. Heard the learned Senior Counsel appearing on behalf of the petitioner and we have also perused the records carefully.

7. We are of the clear view that there cannot be a compulsion on the respondent to withdraw the criminal cases filed against the petitioner in C.C.No.7523/2014, stated to be pending on the file of the learned II Metropolitan Magistrate, Egmore, Chennai, as well as the complaint registered before the All Women Police Station, in Crime No.1/2014, for offence under Section 498A I.P.C.

8. With regard to the custody of the minor children, it should be understood that such custody has been given to the respondent, only as an interim measure. Thus, it is clear that no contempt has been committed by the

respondent, as alleged by the petitioner herein. While saying so, we find it appropriate to leave it open to the parties concerned to file appropriate petition before the Court concerned, to seek custody of the minor children, either by way of an interim measure or on a permanent basis, in accordance with law. It is also made clear that the orders passed by this Court, on 09.09.2014, as well as on 11.07.2014, would not stand in the way of the petitioner, or the respondent, to file appropriate petitions, for the custody of the minor children, before the appropriate forum/Court. It would also be open to the parties to make their pleas before the Family Court, Chennai, in a divorce petition, stated to be pending.

9. In such circumstances, we do not find any merit in this Contempt Petition. Hence, this Contempt Petition stands dismissed.

jbm

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SD/
DEPUTY REGISTRAR(OS)

//Certified to be true copy//

Dated at Madras this the day of 2016.

COURT OFFICER(O.S.)

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