

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2016

CORAM

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Cr1.R.C.No.432 of 2015

and

M.P.No.1 of 2015

L.Banupriya

... Petitioner

Vs.

S.Mohan Prasad

... Respondent

Prayer :- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. against the order dated 20.02.2015 made in Cr1.A.No.45 of 2014 on the file of the Principal Sessions Judge, Salem.

For Petitioner : Mr.J.Agni Selvaraju

For Respondent : Mr.A.Thiyagarajan

ORDER

The criminal revision petition is directed against the order passed by the learned Principal Sessions Judge, Salem in Cr1.A.No.45 of 2014 dated 20.02.2015.

2.It is admitted by the petitioner/mother and the respondent/father that the minor child was born to them on 26.06.2008.

3.Both the parties filed affidavit before the Family Court, Salem seeking mutual divorce under Section 13(b) of the Hindu Marriage Act, 1955. The Family Court, Salem on 01.02.2012 by its judgment and decree dissolved the marriage solemnized between the parties. In the order dated 20.02.2015, it is ordered that the appellant/mother should hand over the child either to the parents of the respondent or to the respondent once in two days in a month, family functions and whenever the respondent/father is willing to see the child, the father should be allowed to keep his daughter in his custody and

dispute arose between the parties and the father of the child approached the Child Welfare Committee. The Child welfare committee has directed the parents to take care of the child and to brought up the child in good manner. Aggrieved against the order of the Child Welfare Committee dated 12.02.2014, the petitioner/wife preferred criminal appeal in C.A.No.45 of 2014 on the file of the Principal District and Sessions Judge, Salem.

4.The Principal District and Sessions Judge, Salem in its order dated 20.02.2015, partly allowed by modifying that the minor child is permitted to study in the same class and confirmed the order of the Child welfare Committee in other respects. Aggrieved over the same the present criminal revision is before this Court.

5.The learned counsel for the petitioner would submit that the minor child is not willing to go with her father or to their relations, the child is very much afraid of her father and the order of custody of the minor child with the father has to be dissolved and pleased to allow the revision petition.

6.The learned counsel for the respondent would contend that the Child Welfare Committee and the learned Principal District and Sessions Judge after considering the facts and circumstances and also after consultation with both parties and the parties accepted the said conditions for handing over the custody of the child for two days in a month, school holidays, family functions and whenever the respondent is willing to see her daughter and submits the criminal revision is not maintainable at this stage. The question of child being afraid of her father is tutored one, which cannot be a reason to avoid the father to see his own daughter.

7.Heard the rival submissions made on both sides.

8.In this case, the perusal of the judgment of the learned Principal Sessions Judge, Salem in paragraph 11 of its judgment, it is decided by the parties that the appellant should hand over the minor child custody Anuvarshini either to the parents of the respondent or to the respondent once in a month for two days as accepted by them. The said judgment is passed with the acceptance of the petitioner herein. The submission so made by the learned counsel for the petitioner that the child is very much afraid of her father and his family members, for which, the minor child/Anuvarshini was questioned by this Court on 07.06.2016 in the chambers. The minor child was aged about seven years, stated that she is not willing to go with her father. Considering the age of the child, this Court is of the opinion that the words spoken by the child are tutored one and

this Court is not inclined to give much importance to the words of the minor child who is aged about seven years only.

9. In view of the above said facts and circumstances, the order passed by the learned Principal District and Sessions Judge, Salem deserves merits and acceptance and this court finds no illegality or infirmity in the order passed by the trial court and the same does not warrant any interference by this court.

10. In the result, the criminal revision petition stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District and Sessions Judge,
Salem.

2. The Family Court,
Salem.

+1cc to Mr.A.Thiyagarajan, Advocate, S.R.No.33866
+1cc to Mr.J.Agni Selvaraju, Advocate, S.R.No.33865

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AD(CO)
CA(01/07/2016)

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