

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.09.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.R.C.No.1030 of 2016
and MP.No.8533 of 2016

1. H.Jamina Fathima
2. Ahamed Afzhal (minor)
R2 Rep. by Mother and Natural
Guardian R1 .. Petitioners

Vs.

A.Y.Ahmed Mothi .. Respondent

Prayer :- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 04.07.2016 made in MP.No.274 of 2015 in MC.No.293 of 2010 on the file of the III Additional Family Court, Madras.

For Petitioners : Mr.S.Kasirajan.
For Respondent : Mr.N.Srinivasa Raghavan.

ORDER

The criminal revision petition is directed against the order passed by the learned III Additional Principal Judge, Family Court, Chennai made in MP.No.274 of 2015 in MC.No.293 of 2010 dated 04.07.2016.

2.The present revision petitioners filed application under Section 125 Cr.PC in MC.No.293 of 2010 for maintenance. During the pendency of the case, the petitioners filed MP.No.274 of 2015 under Section 151 CPC to direct the respondent to produce certain documents. The revision petitioners requested the respondent to produce the following documents which are as follows :-

1. Xerox copy/copies of your passport from 08.04.2007, the date of marriage to 09.04.2015, the date of RW1 cross examination (continuation)
2. Xerox copy/copies of your Bank Pass Book/s Credit A/c.No.Name - Ahmed Mothi Yamohideen/041-396 006 including the Bank Pass Books pertaining to other

- Banks where you are having accounts.
3. Xerox copy/copies of continuous Discharge Certificate (Seafarers Identity Document)
 4. Xerox copies of Contract Letters issued by Fleet Management Ltd (Account2), 18th Floor, Masmutual Tower, 38, Glouster Road, Hong Kong.
 5. Xerox copy of your pan card.
 6. Xerox copy/copies of such registered/unregistered documents showing details of both movable and immovable properties standing in your name.
 7. Xerox copy/copies of Life Insurance Certificate/Policy details taken in your name.

The trial Court without analysing the evidence directed to issue notice to the respondent to produce the aforesaid documents, stating that failure to produce the same would result in drawing adverse inference. Notice was also issued by the petitioner to the respondent to produce the copies of the said documents on or before 31.05.2015 and to produce the original documents before the III Additional Family Court, Madras for the hearing on 09.06.2015. Even after serving notice to the respondent, the trial Court dismissed the claim of the petitioner. Hence, the revision petition by the petitioner/wife before this Court to set aside the order of the trial Court and to allow the criminal revision.

3.The learned counsel for the respondent contended that the trial Court after considering the arguments of both sides, dismissed the application. The respondent cannot be compelled to produce those documents and the order of trial Court dismissing the application is correct and there is no illegality or infirmity in the order passed by the trial Court and prays to dismiss the revision filed by the petitioner.

4.Heard the rival submissions made on both sides and perused the records.

5.In this case, the revision petitioner filed MC.No.293 of 2010 before the III Additional Family Court, Chennai, is pending, to prove the income of the respondent, the petitioner filed MP.No.274 of 2015 to direct the respondent to produce document Nos.1 to 7 as stated above, which are relevant to prove the income and status of the respondent. The learned counsel for the respondent contended that as per the order of the Court the petitioner issued notice to the respondent to produce the above said documents, on failure to produce the same adverse inference will be taken against the present respondent. Even after the receipt of the notice, respondent has neither produced the documents nor filed any reply to that effect. In the

present case in hand, notice was given by the petitioner to the respondent, the respondent has not chosen to produce the documents before the Court or filed any reply. The arguments of the learned counsel for the respondent is that the petitioner cannot insist the respondent to produce the documents to prove the income and status of the respondent, but, the petitioner has every right to call for any documents from any person, provided the petitioner has to request the Court to produce the documents of any/third person before the Court. The respondent has not denied the existence of documents in his custody, the only contention of the learned counsel for the respondent is that the documents are personal documents and it is not necessary for him to produce the same before the Court. The said contention of the respondent is liable to be rejected, since, the documents are in the custody of the respondent, the respondent is liable to produce the documents before the Court. Failure on the part of the respondent to produce the documents, inspite of receipt of notice, the trial Court has every right to draw adverse inference against the respondent.

6. In the result, the criminal revision is disposed of, directing the respondent to produce the aforesaid documents 1 to 7 before the trial Court within a period of one week from the date of receipt of a copy of this order. Failure on the part of the respondent to produce the documents before the trial Court, the trial Court is directed to draw an adverse inference against the respondent, with regard to the above facts stated by the petitioner in the trial. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To
The III Additional Family Court, Chennai.

1 cc to M/s.S.Kasirajan, Advocate, sr.52952
2 ccs to M/s.N.Srinivasa Raghavan, Advocate, sr.53387

Cr1.R.C.No.1030 of 2016

ala co
kra 07.10.2016