

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2016

(Orders Reserved on : 21.06.2016)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.836 of 2016

and

Crl.M.P.No.6347 of 2016

I. Prabhakar

.. Petitioner

Vs.

State rep. by
Inspector of Police,
AVS, Chennai.
(Crime No.138 of 2015)

.. Respondent

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of the Code of Criminal Procedure, praying to set aside the order passed by the learned IV Metropolitan Magistrate, Saidapet, Chennai, dated 24.11.2015 in C.M.P.No.5386 of 2015 in AVS Cr.No.138 of 2015, which was confirmed by the learned XVI Additional City Civil Court, Chennai, dated 18.04.2016 in Crl. Appeal No.40 of 2016.

For Petitioner : Mr.M.Madhankumar

For Respondent : Mr.M.Mohamed Riyaz,
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case is directed against the order dated 24.11.2015 passed by the learned IV Metropolitan Magistrate, Saidapet, Chennai, in C.M.P.No.5386 of 2015 in AVS Cr.No.138 of 2015, which was confirmed by the learned XVI Additional Sessions Judge, XVI Additional City Civil Court, Chennai, dated 18.04.2016 in Crl.Appeal No.40 of 2016.

2. The learned counsel appearing for the petitioner would contend that the present petitioner is the husband of the victim namely, Tmt.Kajol, aged 23 years, who is said to have been secured by the respondent police in Crime No.138 of 2015. The respondent police arrested one Senthil Kumar under Sections 4(1) and 5(1) of Immoral Traffic Prevention Act on 08.11.2015. Subsequently, the victim was subjected to medical

examination and was ordered to be kept under interim safe custody at Government Vigilance Home, Mylapore, Chennai. The petitioner has filed a petition before the learned IV Metropolitan Magistrate, Saidapet, Chennai, for custody of the victim. The trial Court, erroneously, dismissed the said petition. It is further contended that the learned Magistrate has failed to consider the fact that as per the remand report, the petitioner's wife was allegedly secured from Koyambedu Bus Terminus, while arresting the accused. The place where the victim Kajol was secured does not come within the ambit of the definition at Section 2(a) of the Immoral Traffic Prevention Act. It is further contended that the Court below failed to look into the procedural irregularities and illegalities committed by the respondent in securing the victim Kajol, who has been secured and produced before him under Section 15(5) of the Immoral Traffic Prevention Act. Further, while passing the order, the Court below failed to look into the violation of Section 17(6-A) by the Special Police Officer. Since the Court below has not look into the legal positions in this case, the order of the trial Court has to be set aside and the custody of the victim has to be given to the petitioner.

3. The learned Government Advocate (Crl.Side) would contend that since the petitioner is not able to prove the fact that he is the husband of the victim, he is not entitled to file a petition for custody of the victim. It is further contended that there is no infirmity or illegality in the order passed by the learned Magistrate and hence, the learned Government Advocate prayed that the Criminal Revision Case may be dismissed.

4. In this case, the petitioner has filed a petition before the trial Court seeking interim custody of the victim as the capacity of her husband. To prove the fact that he is the husband of the victim Kajol, the petitioner has not filed any documents before the Magistrate Court. Further, the learned Magistrate ordered enquiry regarding the genuinity of the above fact claimed by the petitioner and collected report from the probation officer. The report of the probation officer reveals that the victim is the native of Bangalore. Further, the victim, in her statement, told that when she was three years old, her parents were died and she was brought up by one Aunt named Reshmi. She has been in Bangalore for the past 20 years. But she said that she speak only Hindi and does not know to speak Kannada. When she was in Bangalore, she met the petitioner herein and fell in love with him and both got married and came to Chennai, without the knowledge of the Aunt Rashmi. She said that she came to Koyambedu one day and thereby pushed into flesh trade. Later she was rescued by the police. Further, the husband of the victim, in his statement, stated that he belongs to Christianity and her wife belongs to Muslim Community and both got married in Ganesh temple in Bangalore. Further, the petitioner, in his statement, stated that he and his wife are residing in a

rental house and he is giving Rs.4,500/- towards house rent. But the Probation Officer, in his report, specifically stated that the petitioner is giving only Rs.3,400/- as rent. Since there was so many contradictions between the statements of the victim and the petitioner and the Probation Officer's report, the trial Court clearly found that the petitioner has not proved his case that he is the husband of the victim. To prove the fact that the petitioner is the husband of the victim, he was not able to produce any documents before the Court even though they are living as husband and wife. Hence, since the present petitioner is not able to prove the fact that he is the husband of the victim, he is not entitled to seek interim custody of the victim.

5. It is useful to refer Section 17(2) and Section 17-A of the Immoral Traffic Act, which read as follows:-

"17(2) when the person is produced before the appropriate Magistrate under sub-section (5) of Section 15 or the Magistrate under sub-section (2) of Section 16, he shall, after giving her an opportunity of being heard, cause an inquiry to be made as to the correctness of the information received under sub-section (1) of Section 16, the age, character and antecedents of the person and the suitability of her parents, guardian or husband for taking charge of her and the nature of the influence which the conditions in her home are likely to have on her if she is sent home, and, for this purpose, he may direct a Probation Officer appointed under the Probation of Offenders Act, 1958, to inquire into the above circumstances and into the personality of the person and the prospects of her rehabilitation.

17-A. Conditions to be observed before placing persons rescued under Section 16 to parents or guardians-Notwithstanding anything contained in sub-section (2) of Section 17, the magistrate making an inquiry under Section 17, may, before passing an order for handing over any person rescued under Section 16 to the parents, guardian or husband, satisfy himself about the capacity or genuineness of the parents, guardian or husband to keep such person by causing an investigation to be made by a recognised welfare institution or organisation"

6. On a reading of the above provisions, it is clear that the learned Magistrate, after enquiring the victim and Probation Officer's report, was not satisfied with the genuineness of the claim of the petitioner and came to a conclusion that the petitioner is not the husband of the victim Kajol and rejected the claim of the petitioner for interim custody of the victim. Therefore, there is no

infirmity or illegality in the order passed by the learned IV Metropolitan Magistrate, Saidapet, Chennai, in C.M.P.No.5386 of 2015 in AVS Cr.No.138 of 2015, which was confirmed by the learned XVI Additional Sessions Judge, XVI Additional City Civil Court, Chennai, dated 18.04.2016 in Crl.Appeal No.40 of 2016. This Court finds no reason to interfere with the orders passed by both the Courts below which do not warrant any interference by this Court and hence, the criminal revision case is liable to be dismissed.

7. In the result, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Jrl

To

1. The XVI Additional City Civil Court,
Chennai.
2. The IV Metropolitan Magistrate,
Saidapet, Chennai.
3. The Inspector of Police,
AVS, Chennai.
4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Madhan Kumar, Advocate, S.R.No48318

PA(CO)
EU(06/09/2016)

Crl.R.C.No.836 of 2016