



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2016

CORAM:

WEB COPY

THE HONOURABLE Dr.JUSTICE P.DEVADASS

Cr1.R.C.(MD)No.985 of 2011
and
M.P.(MD)No.1 of 2011

Solomon Jesudoss

... Petitioner

Vs.

1.Uma Rani

2.Minor Joshua Gnanaraj

3.Minor Jerome Gnanaraj

... Respondents

(Minor R2&R3 are represented by their next friend
and mother 1st respondent)

Prayer: Criminal Revision Petition is filed under Sections 397 and 402 of Cr.P.C., to set aside the order dated 20.09.2011 made in M.C.No.16 of 2010 on the file of the Principal District Munsiff cum Judicial Magistrate, Karaikudi.

For Petitioner : Mr.T.Vadivelan, Legal Aid Counsel
For Respondents : Mr.R.Manimaran, Legal Aid Counsel

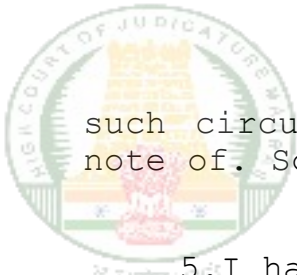
ORDER

An husband is challenging grant of maintenance to wife and his children namely, R1 to R3.

2.There is hectic fight between the revision petitioner and the 1st respondent, who are spouses. R2 and R3 the minor children are their children. Uma Rani for herself and for children claimed maintenance before the learned Judicial Magistrate, Karaikudi. Ultimately, the learned Judicial Magistrate granted Rs.3,000/- per month to Umarani / R1 and Rs.1,500/- per month each to R2 and R3 from the date of petition.

3.The learned counsel for the revision petitioner would contend that admittedly the respondents 2 and 3 are not in the custody of the 1st respondent. But, they are in the custody of the revision petitioner. In such circumstances, granting maintenance to all the respondents is not sustainable in law.

4.On the other hand, the learned counsel for the 1st respondent would submit that on the date when M.C. petition was filed, the children are in the custody of the husband. A guardian petition was also filed by the husband. No order was passed. However, the revision petitioner taken away the children. It is an illegal custody. In



such circumstances, such a custody cannot be recognized and taken note of. So they are also entitled to maintenance.

5.I have considered the rival submissions, perused the impugned order and also considered the materials on record.

6.So far as Uma Rani is concerned, what was granted is only Rs.3,000/- per month. She continues to be the wife of the revision petitioner. We don't want to disturb that.

7.The respondents 2 and 3, who are children of revision petitioner and the 1st respondent. During the pendency of M.C. proceedings, respondents 2 and 3 have gone to the custody of the revision petitioner. Under Section 125 Cr.P.C., maintenance could be granted to the mother for her children, if she is having their custody. Now admittedly, in this case, the 1st respondent is not having the custody of respondents 2 and 3. The legality of the custody under Section 125 Cr.P.C. need not be gone into. Custody alone is a condition precedent for grant of maintenance to the children under Section 125 Cr.P.C. The legality of the custody can be gone into in an another forum in an appropriate petition. In such view of the matter, grant of maintenance to respondents 2 and 3 is not in accordance with law.

8.In the circumstances, this revision is allowed in part. The grant of maintenance to respondents 2 and 3 in M.C.No.16 of 2010 on the file of the Principal District Munsif cum Judicial Magistrate, Karaikudi alone is set aside. Consequently, connected M.P.is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif cum
Judicial Magistrate, Karaikudi.

+ 1 CC TO MR.T.VADIVELAN, ADVOCATE IN SR No. 30449
+ 1 CC TO MR.R.MANIMARAN, ADVOCATE IN SR No. 30415

NBJ

TE/ARK-PV/ : 20/06/2016 : 2P/4C

Cr1.R.C. (MD) No.985 of 2011
and

M.P. (MD) No.1 of 2011
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