IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2017

CORAM

THE HON'BLE MR. JUSTICE **R.SURESH KUMAR**

Crl.R.C.No.1186 of 2017
Crl.M.P.No.11352 of 2017

1. A.Subashini
2. Ruhitha
   Minor represented by
   Mother and Guardian
   A.Subashini ...Petitioners

Vs.

K.Raajesh Kanna ...Respondent

Prayer:- Petition filed under Section 397 r/w 401 of the Criminal Procedure Code, 1973 praying to call for the record in C.M.P.No.1128 of 2017 in M.C.No.1 of 2017 pending on the file of the learned Judicial Magistrate, Ambattur, Chennai and set-aside the order dated 30.06.2017 and allow the petition in M.C.No.1 of 2017 by allowing the revision.

For Petitioners : Mr.I.Lakshmana Shankar

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ORDER

This revision case has been filed against the order dated 30.06.2017 passed by the learned Judicial Magistrate, Ambattur, Chennai in

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C.M.P.No.1128 of 2017 in M.C.No.1 of 2017.

2. The first petitioner is the wife and the second petitioner is the minor child of the respondent. These petitioners have filed the above said maintenance case in M.C.No.1 of 2017 before the learned Judicial Magistrate, Ambattur, Chennai seeking maintenance from the respondent/husband.

3. During the pendency of the said M.C.No.1 of 2017, a petition has been filed by the petitioners in C.M.P.No.1128 of 2017 seeking orders from the Court below, to direct the respondent to pay the school fees paid/payable to the second petitioner/child. The learned Judge after hearing the parties has passed the order, in the said miscellaneous petition, which is impugned herein, where the learned Judge has directed the respondent to pay the school fees, for this year, which is Rs. 54,500/-, within a period of one month from the date of that order. Aggrieved by the said order, the present revision is filed.

सत्यमेव जयते

4. I have heard Mr.I.Lakshmana Shankar, learned counsel appearing for the petitioners, who would submit that though the second petitioner/child had been in the school from the Pre.K.G level, in this regard, the first petitioner/wife, who is the mother of the second petitioner/child, alone spent a sum of Rs.1,10,000/- towards school fees for all these years

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towards the child. And that apart, the first petitioner also spent huge money by way of donation, which had been given to the school management where the second petitioner is studying.

5. The learned counsel would further state that these amounts were mobilized by the first petitioner only by pledging her jewels, for which, the first petitioner also paid a sum of Rs.3,000/- towards interest every month and these factors ought to have been taken into account in the present order which is impugned herein by the learned Judge. The learned counsel would further state that at least a major portion of the amount, so far spent towards school fees for the second petitioner, ought to have been directed to be shared by the respondent/ husband. Instead of that, the learned Judge has only directed the respondent to pay a sum of Rs.54,500/- for the current year and therefore the said order is liable to be interfered with.

सत्यमेव जयते

6. I have considered the said submission made by the learned counsel for the petitioner and also perused the materials placed before this Court.

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7. In the connected case, the petitioners also assailed the order passed by the learned Judge granting interim maintenance of Rs.7,000/- to

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the second petitioner/child. The said order has also been challenged in the connected revision case (Crl.R.C.No.1187 of 2017), wherein this Court has come to the conclusion that the said order directing the respondent/ husband to pay a sum of Rs.7,000/- as interim maintenance is a justifiable order. In the said back ground, whether the present order where the learned Judge has directed the respondent/husband, who is the father of the second petitioner, to pay a sum of Rs.54,500/- towards school fees for the child is a justifiable one or not and no more amount ought to have been directed by the learned judge as claimed by the petitioners is to be looked into.

8. The learned Judge after having found that, admittedly, the first petitioner is an earning member as she is working as Assistant Professor/Lecturer and out of which she is getting monthly salary of Rs.34,000/- per month and that is the reason, the learned judge did not pass any order for granting interim maintenance to the first petitioner/ wife. The learned Judge, in the connected order, as referred above, has directed the respondent to pay a sum of Rs.7,000/- per month towards the maintenance of child.

9. Insofar as the present claim in this petition i.e., sharing of the school fees paid/payable is concerned, even according to the first

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petitioner/wife, the school fees, sofaras paid by her, is only Rs.1,10,000/-. Whether any donation paid by the first petitioner, as she claimed, has only to be decided at the time of final hearing of the maintenance case and there should be direct documentary evidence that the first petitioner paid the said sum towards donation to the educational institution, as it is a common knowledge that no donation is to be collected by any educational institution. Therefore in the said circumstances, the learned Judge after taking into account directed that the fees to be payable to the School for the current year, i.e, Rs.54,500/- in entirety to be paid by the respondent, in the order impugned. What has been paid either by way of fees or by way of donation can only be assessed at the time of the final hearing of the maintenance case, since the present petition is for sharing of school fees payable towards the second petitioner/child. The learned Jude is right in directing the entire fees of this year is to be paid by the respondent, in the impugned order. Therefore this Court is of the considered view that the said order is balanced and justifiable order in the present circumstances of the case.

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10. Accordingly, this Court finds no unjustness or illegality attached with the impugned order and hence the revision case fails and accordingly it is dismissed.

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11. It is made clear that because of this dismissal of the criminal revision case the liability of the respondent/husband to share the school fees or any other academic expenses towards the second petitioner/child cannot be erased or taken away and in such event, the same can be decided ultimately in the final hearing of the maintenance case. This Court believes that appropriate order would be passed by the learned Judge while disposing the maintenance case.

12. With these observations, this criminal revision case is dismissed. Consequently connected miscellaneous petition is also closed.

07.09.2017

Speaking/non speaking order
Index :Yes/No

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To
The Presiding Officer,
The Judicial Magistrate, Ambattur,
Chennai.

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