

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.21694 of 2018
and
CRL.MP.No.12276 of 2018

1.Sakthivel
2.Visalatchi ... Petitioners

Vs.

1.Jeevitha
2.Minor.Monishwar,
Rep. By his mother and Natural Guardian
Jeevitha ... Respondents

PRAYER: This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in CRMP.No.4088 of 2017 in DVA.No.4 of 2017 on the file of the Judicial Magistrate Court, Palladam dated 19.07.2018.

For Petitioners : Mr.S.Doraisamy

O R D E R

This petition has been filed aggrieved by the order of interim maintenance granted by the Judicial Magistrate Court, Palladam in Domestic Violence petition filed by the respondents.

2.It is seen from the records that the petition for interim maintenance has been filed under Section 29 of the Protection of Women from Domestic Violence Act, 2005. The Court below has also passed an order of interim maintenance insofar as the child is concerned. Aggrieved by the same the present Criminal Original Petition has been filed.

3.Looking at the Scheme of the Act, Section 29 provides for an appeal. It will be relevant to extract the provision of Section 29:-

"29. Appeal

There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later."

4.A reading of the above said provision makes it clear that as against any order passed by the Magistrate, an appeal shall lie before the Court of Session. This provision does not make a distinction between a interim order and the final order. Therefore it can only be read as any order passed by the Magistrate under the provisions of the Act. Therefore, the petitioners will have to agitate against the order passed by the Court below, only by filing an appeal before the Court of Session. The Criminal Original Petition filed before this Court is not maintainable.

5.In view of the above, liberty is granted to the petitioners to file an appeal before the Court of Session under Section 29 of the Protection of Women from Domestic Violence Act 2005. Since the petitioners were bona fide agitating the issue before this Court, the time spent by the petitioners before this Court shall be excluded by the Court of Session while entertaining the appeal, in order to determine regarding the limitation provided under Section 29 of the Act.

6.This Criminal Original Petition is disposed of by granting liberty to the petitioners to the extent indicated herein above. The registry is directed to return back the original impugned order in order to enable the petitioners to work out their remedy by filing an appeal.

stm/i

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate Court, Palladam.

+1cc to M/s.S.Doraisamy, Advocate Sr.No.77815 dt.20.11.2018

sm:19.11.2018

Cr1.O.P.No.21694 of 2018