

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.04.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.R.C.No.229 of 2011
& M.P.No.1 of 2011

Attaya Sellammal

..

Petitioner

versus

Minor Kavitha
[by its Guardian Grand mother Thangammal]
Valapur Nadu,
Arapalieswarar Kovil Street,
Periya Kovilur Post,
Kolli Hills,
Namakkal Taluk.

..

Respondent

Prayer: Criminal Revision Petition is filed under Section 397 and 401 of the Code of Criminal Procedure, to set aside the order dated 30.11.2010 made in Crl.R.P.No.12 of 2010 on the file of the Principal Sessions Court, Namakkal, reversing the order dated 26.08.2009 made in M.C.No.13 of 2007 on the file of the Chief Judicial Magistrate, Namakkal.

For Petitioner : Mr.T.Dhanyakumar

For Respondent : Mr.B.Vasudevan

ORDER

The revision petitioner, namely, Attaya Sellammal is the respondent in M.C.No.13 of 2007 on the file of the learned Chief Judicial Magistrate, Namakkal. The respondent / minor Kavitha is the granddaughter of the revision petitioner.

2. In the year 2007, the present respondent minor Kavitha filed an application under Section 125 Cr.P.C., in which, she claimed Rs.3,000/- as maintenance from the revision petitioner. After taking cognizance, the learned Chief Judicial Magistrate, Namakkal, on 26.08.2009, dismissed the claim made by the respondent by mentioning that the petition filed by the respondent is not maintainable.

3. Against which, the respondent filed Criminal Revision Petition before the learned Principal Sessions Judge, Namakkal in Crl.R.P.No.12 of 2010. In the said revision, the learned Principal Sessions Judge, Namakkal passed an order, in which, the learned Judge set aside the order passed by the learned Chief Judicial Magistrate and ordered

the revision petitioner to pay Rs.1,000/- as maintenance to the respondent. Aggrieved over the order passed by the learned Principal Sessions Judge, Namakkal, the petitioner approached this Court for setting aside the same.

4. Now, on going through the order passed by the learned Principal Sessions Judge, Namakkal, it appears that the learned Judge came to the conclusion that even though the petitioner being the grandmother of the respondent, the said relationship can be construed as mother and child relationship, whereby the respondent being the child can claim maintenance against the grandmother, who is in possession and enjoyment of the property, which belongs to the respondent.

5. In this regard, the learned counsel appearing for the revision petitioner vehemently contended that the provision under Section 125 Cr.P.C. did not raise any obligation to the child for asking maintenance from the grandmother. Even though the property which was given by the father of the child is in the custody of the petitioner, she is having only a life estate in the said property. Further, from the said

property, no income was derived by the petitioner. So, the direction to give maintenance is against the law. Accordingly, he prayed for allowing the Revision.

6. In this case, before discussing the merits and demerits of the revision, it should be necessary to consider the circumstances arisen in and around the family of the minor child. The minor Kavitha is residing in Kollihills. Now, she is in the maternal grandmother's house. The father of the minor Kavitha, Kuttiyandi Thangaraj was died 12 years back from the date of filing of the maintenance application. Subsequent to that, the mother of the minor Ayammal ran away from the maternal home and married one Rajamanickam. In the said circumstances, the minor child is with the grandmother and she studied 9th standard in her village.

7. As of now, the property belongs to the minor child was enjoyed by the petitioner [Attaya Sellammal], through which she earned Rs.1,00,000/- per month as income. Further, she attempted to alienate the property for which the minor child filed a suit in O.S.No.953 of 2006 before the District Munsif Court, Namakkal and got an order of interim

injunction. Even after getting the injunction order she refused to maintain the minor.

8. Now, on going through the judgments rendered by the learned Chief Judicial Magistrate and the learned Principal Sessions Judge, both of them have concluded that there is no provision available for a minor child to claim maintenance from the grandmother, by way of filing the application under Section 125 Cr.P.C. The learned Principal Sessions Judge specifically came to the conclusion that only because of the reason that the property of the minor child is in the custody of the grandmother, the minor child is eligible for getting maintenance. In the said situation, Section 125 Cr.P.C. speaks as follows:

“125. Order for maintenance of wives, children and parents, (1) If any person having sufficient means neglects or refuses to maintain
—
(a) his wife, unable to maintain herself, or
(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

[Provided further that the Magistrate may order the father of a minor female child referred to in

clause (b) to make such allowance, for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person]

Explanation—For the purposes of this Chapter—

(a) "**minor**" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "**wife**" includes a woman who has been divorced by or has obtained a divorce from her husband and has not remarried."

9. Accordingly, on going through the definition under Section 125 Cr.P.C., it is true that there is no provision provided to the minor child for claiming maintenance from the grandmother. So, the learned Principal Sessions Judge, Namakkal, construed the relationship of the petitioner and the respondent as a daughter and mother is nothing but against the provisions. It is true that the situation of the minor child is a pitiable one. Even though the provision is not available in the Criminal Procedure Code, the minor child is having the right to file a suit against the petitioner for claiming maintenance by saying that the property belongs to her is in the custody of the petitioner. Despite of that, the minor filed a petition under the provisions of Section 125 Cr.P.C. is not maintainable. So, we are constrained to follow the procedure of the Criminal Procedure Code. Even though this Court is the forum of equity only in the discretionary matters we are having the power to utilise the equity and good conscience. But in this case, the minor child is not having any basic eligibility for getting maintenance from her grandmother. So, the order passed by the learned Principal Sessions Judge, Namakkal, is liable to be set aside and accordingly, the same is set aside.

10. In fine, the Criminal Revision is allowed. Consequently, connected Miscellaneous Petition is closed.

28.04.2018

Index : Yes / No

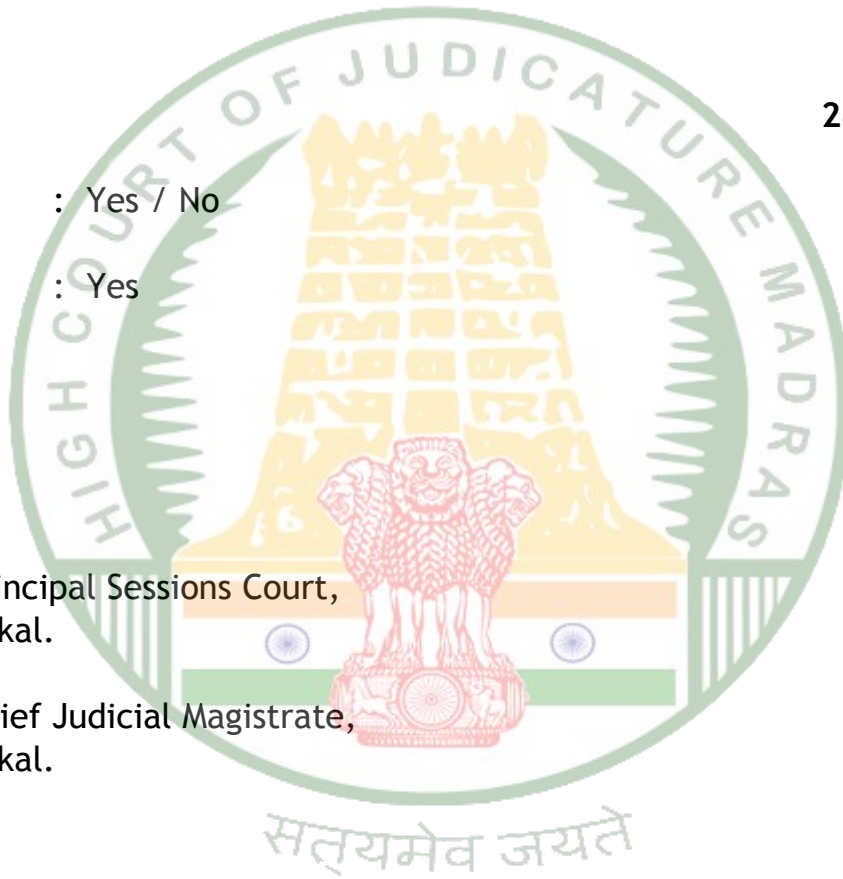
Internet : Yes

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To

1.The Principal Sessions Court,
Namakkal.

2.The Chief Judicial Magistrate,
Namakkal.



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R.PONGIAPPAN, J.,

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