

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.16172 of 2018

1.Hafeez Ahmed
2.Habeebunissa
3.Irfana Begum
4.Asma Begum

...Petitioners

Vs

Faridha Begum

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C to set aside the order passed by the learned XV Metropolitan Magistrate, George Town, Chennai in Crl.M.P.4157 of 2017 in D.V.C.No.17 of 2017 dated 13.04.2018.

For Petitioner : Mr.R.Selvarajan

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 13.04.2018 passed by the learned XV Metropolitan Magistrate, George Town, Chennai in M.P.4157 of 2017 in D.V.C.No.17 of 2017.

2.Heard the learned counsel appearing for the petitioner and perused the materials placed on record.

3.For the sake of convenience, the parties will be referred to by their name. Faridha Begum has initiated proceedings under the Domestic Violence Act in D.V.C.No.17 of 2017 and the same is pending before the learned XV Metropolitan Magistrate, George Town, Chennai, wherein, she has claimed various reliefs including relief of ad interim maintenance from Hafeez Ahmed. Faridha Begum filed M.P.No.1148 of 2017 in D.V.C.No.17 of 2017 for interim maintenance, in which the learned Magistrate, by order dated 31.08.2017, had directed Hafeez Ahmed to pay Rs.10,000/-p.m. Hafeez Ahmed did not bother to comply with the said order. Therefore, Faridha Begum filed

M.P.No.4157 of 2017 in D.V.C.No.17 of 2017 for striking of the pleadings and directing the Court not to give him an opportunity to cross-examine her, on the ground that Hafeez Ahmed had not complied with the order passed by the trial Court in M.P.No.1148 of 2017. After hearing both sides, the trial Court, by order dated 13.04.2018 in M.P.No.4157 of 2017, has held that the right of Hafeez Ahmed to cross-examine Faridha Begum cannot be denied, on the ground that Hafeez Ahmed had failed to make the interim payment. However, the trial Court has given time of three weeks for Hafeez Ahmed to pay the arrears, failing which, he would not be entitled to cross examine Faridha Begum. Challenging the said order, Hafeez Ahmed is before this Court.

4.Mr.Arun Kumar, learned Counsel for the Hafeez Ahmed submitted that Faridha Begum has taken away all the gold jewels belonging to Hafeez Ahmed and therefore, Hafeez Ahmed was willing to pay her interim maintenance, only if she returns the gold jewels. Mr.Arun Kumar submitted that Faridha Begum herself has admitted this during police enquiry.

5.In the opinion of this Court, there is no infirmity in the order passed by the learned Magistrate. Hafeez Ahmed should have file a regular appeal before the Sessions Court against the order in M.P.No.1148 of 2017. Therefore, he has no right to challenge the said order in a proceeding under Section 482 Cr.P.C before this Court.

6.The fact remains that Faridha Begum has not seen the colour of the coin. Though a petition for striking off is not maintainable in the Code of Criminal Procedure, as rightly held by the Magistrate, yet, there is a legal obligation for Hafeez Ahmed to comply with the earlier order dated 31.08.2017 and make the interim payment, failing which, he will not be entitled to cross-examine Faridha Begum as held by the trial Court, in the order dated 13.04.2018. In fact, the trial Court has given time for three weeks to Hafeez Ahmed to pay the arrears and only thereafter, if he fails to make the payment, he will forfeit his right to cross-examine Faridha Begum. This Court does not find any infirmity in the order passed by the trial Court warranting interference and this petition stands dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The XV Metropolitan Magistrate,
George Town, Chennai.

2.The Public Prosecutor
High Court, Madras.

CrI.O.P.No.16172 of 2018

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