



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Rev.Aplc(MD)No.99 of 2018 in
CRP(MD)No.1395 of 2008 and
CMP.No.7866 of 2018

Selvam

.. Petitioner/Petitioner

VS

Selvaraj

.. Respondent/Respondent

PRAYER: Review Application filed under Order 47 Rule 1 r/w Section 114 of CPC, to review the order passed in C.R.P.(MD)No.1395 of 2018 dated 24.07.2018 passed by this Court.

Prayer in CRP(MD). 1395/ 2018 :

Civil Revision Petition is filed under Article 227 of the Constitution of India to call for the records relating to the fair and decreetal order dated 24.04.2018, I.A.No.18 of 2018 in HMOP No.129 of 2016 passed by the learned Subordinate Judge, Virudhunagar and allow the same.

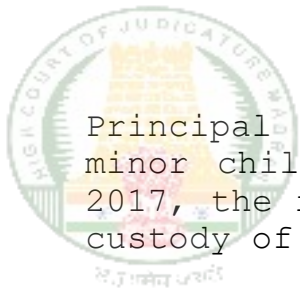
For Petitioner	: Mr.T.Lajapathi Roy
For Respondent	: Mr.J.Senthil Kumaraiah

ORDER

The petitioner, who is the petitioner in CRP(MD)No.1395 of 2018 has filed this review petition seeking to review the order in the Civil Revision Petition (MD)No.1395 of 2018 dated 24.07.2018.

2.It is the case of the petitioner that she has filed the Civil Revision Petition challenging the order passed by the learned Subordinate Judge, Virudhunagar in I.A.No.18 of 2018 in HMOP.No.129 of 2016 dated 24.04.2018, in which the respondent/husband has filed I.A.No.18 of 2018 pending H.M.O.P.No.129 of 2016 seeking custody of minor child namely Monika Sri for two days i.e. Saturday and Sunday till the disposal of the main H.M.O.P.No.129 of 2016.

3.Originally the petitioner/wife has filed HMOP.No.129 of 2016 before the learned Sub Judge, Virudhunagar for divorce on the ground of cruelty. During the pendency of the HMOP.No.129 of 2016 the respondent/husband filed GWOP.No.12 of 2017 before the learned



Principal District Judge, Madurai to handover the custody of the minor child Monika Sri. While pendency of the above GWOP.No.12 of 2017, the respondent/husband has filed I.A.No.18 of 2018 for interim custody of the minor child viz., Monika Sri.

4.Considering the case, the learned Subordinate Judge, Virudhunagar has passed the following orders:

"The petitioner shall take the child at or after 8 a.m. on every Saturday morning from the respondent's house at Virudhunagar and shall hand over the child at the respondent's house on Sunday at or before 6 p.m. till the disposal of the HMOP."

5.Challenging the said order, CRP(MD)No.1395 of 2018 has been filed by the petitioner/wife.

6.When the matter has been taken on 09.07.2018, both the parties were directed to appear before this Court in my Chamber at 5.00 p.m. on 16.07.2018. Since there was no settlement arosed between the petitioner/wife and the respondent/husband. Hence, the matter is taken on 19.07.2018 for hearing, this Court has passed the following orders:

"Therefore, the petitioner is directed to produce the child before the MMBA Association, Madurai Bench of Madras High Court, Madurai on 21.07.2018 at 9.00 a.m. Thereafter, the President of the MMBA Association is directed to produce the child to the respondent at 10.00 a.m. and the petitioner shall take the child from 10.00 a.m. to 6.00 p.m. The petitioner should not interfere with the custody of the minor child with the respondent/husband before 10.00 a.m. to 6.00 p.m.

The Secretary of the MMBA Association is present before this Court and undertakes that the Bar shall take appropriate steps to handover the child to the respondent/husband from 10.00 a.m. to 06.00 p.m."

7.When the matter was taken up for hearing on 24.07.2018, the learned counsel for the petitioner has informed this Court that he wants to withdraw the appearance before this Court, since the petitioner has not complied the order dated 19.07.2018 passed by this Court. Therefore, I passed the order on 24.07.2018 as follows:

"9.In the result,

(i).this Civil Revision Petition is dismissed with a cost of Rs.1,00,000/- (Rupees One Lakh Only) payable by the petitioner to the Hon'ble Chief Justice Relief Fund attached to this Court within a period of two weeks from the date of receipt of copy of this order.

(iii).Since the petitioner is working as Police Constable, the Superintendent of Police, Virudhunagar District is directed to take appropriate action against her for wilfully disobeying the order passed by this Court on 19.07.2018 in this Civil Revision Petition and



further directed to initiate the disciplinary proceedings against her.

(iv).The learned Subordinate Judge, Virudhunagar is directed to give effect to the order dated 24.04.2018 in I.A.No.18 of 2018 in H.M.O.P.No.129 of 2016, by directing the Superintendent of Police, Virudhunagar District to nominate appropriate police persons to take the custody of child from the petitioner and hand over the same to the respondent/husband as per the order dated 24.04.2018 in I.A.No.18 of 2018 in H.M.O.P.No.129 of 2016.

(v).The Superintendent of Police, Virudhunagar District is directed to inform this Court about the action taken against the petitioner on 07.08.2018.

(vi).The learned counsel for the petitioner is permitted to withdraw his vakalat.

Consequently, connected Miscellaneous Petition is closed.

Post this matter on 07.08.2018 for reporting compliance by the Superintendent of Police, Virudhunagar District through Video Conferencing."

8.Aggrieved against the said order dated 24.07.2018, the present review petition in Rev.Aplc(MD)No.99 of 2018 has been filed by the petitioner.

9.I heard Mr.T.Lajapathi Roy, learned counsel for the petitioner and Mr.J.Senthil Kumaraiah, learned counsel for the respondent and perused the entire materials available on record.

10.When the matter has been taken up today for hearing, both the learned counsels were appeared and the petitioner also appeared in person.

11.The petitioner in this review application states that though she is employed in the Tamil Nadu Uniformed Services as Police Constable Grade-II, she was only permitted avail leave of 12 days per year and she was not able to apply leave and appear before the Court proceedings of this Court on 19.07.2018 and also on 24.07.2018, there was no other reason and the petitioner was not purposely evading the Court proceedings.

12.Her non appearance was neither willful nor wanton, but in the absence of her counsel and the petitioner, this Court passed an order dated 24.07.2018 directing the petitioner to pay a sum of Rs.1,00,000/- as cost and also directing the Superintendent of Police to take disciplinary action against the petitioner.

13.Pursuant to the order of this Court, the Superintendent of Police, Virudhunagar also filed a compliance report by stating that the Superintendent of Police has taken disciplinary action in his proceedings in C.No.F2/PR.No.75/2018 dated 04.08.2018 and took disciplinary action in PR.NBo.75/2018, u/r 3(a) of TNPSS (D&A) Rules



1955 against the petitioner Smt.Selvam.

14.The Superintendent of Police also filed his report and stating that on 27.07.2018 nominated Tmt.Priya, Inspector of Police, Bazaar Police Station to take the custody of the child from the petitioner and hand over to the respondent/husband vide by order dated 29.07.2018. As per the order dated 29.07.2018, the petitioner Smt.Selvam along with child and the respondent/husband selvaraj to be present on 28.07.2018 at 08.00 a.m. and also handed over the child to the respondent/husband and subsequently the order of this Court was also followed and the same was followed on following week i.e. on 04.08.2018 and 05.08.2018 as per the orders of the learned Sub-Judge, Virudhunagar.

15.Though the petitioner has raised various grounds for review the order dated 24.07.2018 and this Court is inclined to review the order.

16.In respect of the order in para-9(i) directing the petitioner to pay a sum of Rs.1,00,000/- to the Hon'ble Chief Justice Relief Fund attached to this Court is modified by directing the petitioner to pay a sum of Rs.10,000/- to the Hon'ble Chief Justice Relief Fund, attached to this Court within a period of two weeks from the date of receipt of a copy of this order.

17.It is made clear that the other portion of the order dated 24.07.2018 directing the Superintendent of Police, Virudhunagar to take appropriate action against the petitioner is set aside and the other order passed by the learned Sub-Judge, Virudhunagar has to be continued till the disposal of the HMOP No.129 of 2016.

18.Pursuant to the order passed by this Court dated 24.07.2018, the Superintendent of Police, also taken action against the petitioner and the order of this Court dated 24.07.2018 has complied properly by the Superintendent of Police, Virudhunagar. Therefore, the Superintendent of Police, is hereby directed not to proceed against the petitioner as per the order dated 24.07.2018 and if any proceedings are initiated against this petitioner may be withdrawn.

19.The order passed in I.A.No.18 of 2018 in HMOP.No.129 of 2016 is continued till the disposal of the HMOP.No.129 of 2016. Accordingly, the Review Application is partly allowed. Consequently, connected MP is closed.

Sd/-

Assistant Registrar (P AND A)

// True Copy //



TO

1. THE SUBORDINATE JUDGE, VIRUDHUNAGAR.

2. THE SUPERINTENDENT OF POLICE,
VIRUDHUNAGAR DISTRICT.

COPY TO:

THE SECTION OFFICER,
ACCOUNTS SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1CC to Mr.T.LAJAPATHY ROY , Advocate SR.No.81972.

VSV

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