



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.10.2018

WEB COPY

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.R.C (MD) No.188 of 2017
and
Crl.M.P. (MD) No.1702 of 2017

Selvaraj : Petitioner/Appellant/
sole Accused

Vs.

Revathi : Respondent/Respondent/
Petitioner

PRAYER: Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to set aside the order passed in Cr.A.No.71 of 2014 dated 31.01.2017 on the file of the Principal District Judge, Pudukottai in Cr.M.P.No.4929 of 2014 in M.C.No.4 of 2014 on the file of the Judicial Magistrate, Pudukottai.

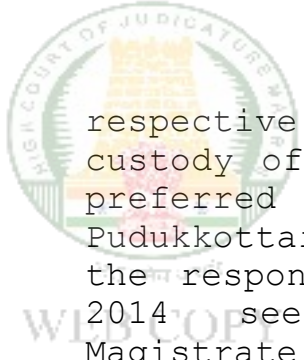
For Petitioner : Mr.S.C.Herold Singh
For Respondent : Mr.D.Ramesh Kumar

ORDER

This Criminal Revision case is filed against the judgment dated 31.01.2017 in Cr.A.No.71 of 2014 passed by the learned Principal District Judge, Pudukottai confirming the order passed by the learned Judicial Magistrate, Pudukottai in Cr.M.P.No.4929 of 2014 in M.C.No.4 of 2014 dated 20.11.2014.

2.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

3.The revision petitioner and the respondent are the husband and wife. The dispute is regarding the custody of the minor boy, who is now about 5½ years old. The petitioner/husband and the respondent/wife have taken recourse of divorce and restitution of conjugal rights before the Family Court respectively and it is now stated that both the petitions were dismissed for default and restoration petitions were filed by the



respective parties and the same is pending. As far as the custody of the minor boy is concerned, the respondent herein has preferred M.C.No.4 of 2014, before learned Judicial Magistrate, Pudukkottai and the same is pending. During pendency of the same, the respondent herein filed an application in Cr.M.P.No.4201 of 2014 seeking interim custody of the minor boy, in which the Magistrate has ordered the custody of the minor boy to be with the wife the respondent herein. Against which the husband/revision petitioner herein filed an application in Cr.M.P.No.4929 of 2014 and the same was dismissed by the learned Judicial Magistrate, Pudukkottai. Aggrieved by that, the revision petitioner/husband has preferred Crl.A.No.71 of 2017 before the learned Principle District Judge, Pudukottai and the same was also dismissed. As per the order of the Magistrate's Court and the same being confirmed by the appellate Court, the custody of the minor boy should have been given to the respondent herein, however by preferring this criminal revision case, the revision petitioner herein is retaining the custody of the minor boy with him, who is presently studying in Chennai.

4.The learned counsel for the respondent has filed a counter contending that since an order passed under Sections 23 and 21 of the Domestic Violence Act 2005, regarding the custody of the minor boy, the revision before this Court is not maintainable.

5.The learned counsel for the revision petitioner would also submit that the order passed by the Magistrate is an *ex parte* order and therefore, aggrieved by that he has preferred an appeal before the learned Principle District Judge, Pudukottai and the same was dismissed, on the ground that the minor boy at tender age of 4 ½ years should be under the care and custody of the mother, despite the order of the Courts below the petitioner holding the minor boy under his custody.

6.Since the interest of the child is involved, this Court is not inclined to look into the technicality regarding the maintainability of the revision petition. The best interest of the child is to be looked into and the Court has to act as *parens patriae* for the minor child. It is an admitted fact that the spouse are under logger-head, one seeking for restitution of conjugal rights and another seeking for divorce. There is also strong allegation of infidelity against the wife.

7.In the said circumstances, this Court thought fit to call the boy and to ascertain whether there is any merit in the revision petition. An affidavit was sought from the respective parties to know about the facility which is now provided to the boy under the custody of the petitioner and the likelihood of ~~services provided by the services~~ better facility, if the boy given in the custody of the mother. The father who is the revision petitioner herein is presently working as Branch Co-ordinator of Montanari Lifts



Components Private Limited, Pune, which is a private concern having head office at Pune, branch at Chennai. The respondent/mother is employed as Staff Nurse in Pudukkottai Government Medical College Hospital. As far as the financial position is concerned, they are equally placed. The respondent has also furnished the details about the educational institutions nearby her place of residence which will provide good education.

8.The contention of the revision petitioner herein is that his mother will take care of the child, whereas the respondent's mother has expired recently and she is supposed to have 24 hours duty round the clock and therefore she can not better person to care the son.

9.This Court is unable to countenance the said submissions. The revision petitioner herein ought to have handed over the custody of the son to the respondent pursuant to the order passed by the Magistrate as early as on 22.05.2014. Till date, he has not complied with the order nor even showed the face of the son to his wife. Depravation of the mother's care, love and custody to young boy, is an act of cruelty, more so, when the mother is eager to care the son. Therefore, I find no merit in the revision petition.

10.Hence, the following directions:-

(i)Till the dispute between the petitioner and the respondent about their matrimonial dispute is decided, the custody of the minor boy will be with the respondent/mother.

(ii)The petitioner/father will have right to visit his son whenever he wishes. The respondent shall not prevent the visitation right of the petitioner.

(iii)The petitioner shall also have a right of having temporary custody of the son for 15 days once in six months. The time and place of handing over the child shall be decided by the spouse.

(iv) Such temporary custody shall not affect the education of the boy. So, preferably the temporary custody shall be during the vacation.

(v) The revision petitioner herein shall hand over the custody of the child to the respondent on or before 21.10.2018.

(vi)The respondent herein shall secure the placement for the child in the nearby school and admit the son in the school and report it to this Court.

11.With these directions, this Criminal Revision Case is disposed of.

<https://hcservices.ecourts.gov.in/> 12.If the parties find any difficulty in abiding the directions of this Court, they are at liberty to approach this Court for suitable modification.



13. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Principal District Judge, Pudukottai.
2. The Judicial Magistrate, Pudukottai.

Copy To:-

The Record Keeper,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

- + 1 CC TO Mr.D.RAMESH KUMAR, ADVOCATE IN SR No. 88781
- + 1 CC TO Mr.S.C.HEROLD SINGH, ADVOCATE IN SR No. 88672

CP
TE/RP/SAR-1 : 23/10/2018 : 4P/7C

ORDER MADE IN
Crl.R.C (MD) No.188 of 2017
04.10.2018