

The Hon'ble Sri Justice Raghvendra Singh Chauhan

Civil Revision Petition No.6041 of 2018

Order:

The petitioner- Smt. D.Sudha has challenged the legality of Order, dated 09-08-2018, whereby the Principal Judge, Family Court, Hyderabad, has dismissed an application *viz.*, IA.No.1293 of 2018 in FCOP.No.605 of 2015, filed by the petitioner, seeking protection of her son from being arrested by respondent No.2, the Station House Officer, Women Police Station, Saifabad.

Briefly, the facts of the case are that, the petitioner - mother had filed the aforesaid application under Section 9(3) of the Family Courts Act, 1984 (for short 'the Act') read with Section 151 CPC for seeking a protection order directing respondent No.2 not to arrest her son, when he lands at Hyderabad between 08-09-2018 and 23.09.2018, so as to enable him to attend the proceedings before the Family Court. However, by the impugned order, the said application was dismissed by the learned Family Court. Hence, this Civil Revision Petition (CRP) before this Court.

The learned Counsel for the petitioner has vehemently contended that the Family Court was established under the Act, in order to ensure that the parties to the disputes are reconciled. Therefore, in pursuance of the said object, the learned Family

Court should have protected the interest of the petitioner's son by directing respondent No.2 not to arrest him when he lands in India.

On the other hand, the learned Counsel for respondent No.1 has submitted, firstly, that the Family Court is not vested with the power under Section 438 Cr.P.C., to pass an anticipatory bail order. Secondly, Section 9 of the Act, under which the application had been filed, merely bestows upon the Family Court, the power to adjourn the proceedings in order to ensure that a settlement is reached between the parties. Therefore, the application was highly misplaced; the learned Family Court was justified in rejecting the same. Thus, the learned Counsel has supported the impugned order.

Heard the learned Counsel for the parties, and perused the impugned order.

The object and reasons for bringing the Act into force are as under:

- “(a) provide for establishment of Family Courts by the State Governments;*
- (b) make it obligatory on the State Governments to set up a Family Court in every city or town with a population exceeding one million;*
- (c) enable the State Governments to set up, such courts, in areas other than those specified in (b) above;*
- (d) exclusively provide within the jurisdiction of the Family Courts the matters relating to-*

- (i) matrimonial relief, including nullity of marriage, judicial separation, divorce, restitution of conjugal rights, or declaration as to the validity of marriage or as to the matrimonial status of any person;*
- (ii) the property of the spouses or of either of them;*
- (iii) declaration as to the legitimacy of any person;*
- (iv) guardianship of a person or the custody of any minor;*
- (v) maintenance, including proceedings under Chapter IX of the Code of Criminal Procedure;*
- (e) make it obligatory on the part of the Family Court to endeavour, in the first instance to effect a reconciliation or a settlement between the parties to a family dispute. During this stage, the proceedings will be informal and rigid rules of procedure shall not apply;*
- (f) provide for the association of social welfare agencies, counsellors, etc., during conciliation stage and also to secure the service of medical and welfare experts;*
- (g) provide that the parties to a dispute before a Family Court shall not be entitled, as of right, to be represented by legal practitioner. However, the court may, in the interest of justice, seek assistance of a legal expert as amicus curiae;*
- (h) simplify the rules of evidence and procedure so as to enable a Family Court to deal effectively with a dispute;*
- (i) provide for only one right of appeal which shall lie to the High Court.”*

A bare perusal of the object and the aim of the Act clearly reveals that the Family Court is meant to act as a Civil Court dealing with certain issues, which affect the family, be it a matrimonial dispute, or a dispute with regard to the custody of the children. However, there is no provision in the Act, which bestows upon the Family Court, the power under Section 438 Cr.P.C.

Section 9 of the Act merely imposes a duty upon the Family Court to endeavour, in the first instance, to arrive at a settlement in respect of the subject matter of the suit or proceedings. Sub-Sections (2) and (3) thereof further bestow a power upon the Family Court to adjourn the proceedings, for such period as it

thinks fit, to enable a settlement. Even the said provision does not empower the Family Court to prevent the Police from arresting either of the party to the proceeding pending before it, especially, when a Criminal Case has been filed against him/her. Therefore, the learned Family Court was legally justified in dismissing the application filed by the petitioner.

For the reasons stated above, this Court does not find any merit in the present CRP. It is hereby dismissed.

Consequently, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.



(Raghvendra Singh Chauhan, J)

Dt: 14th December, 2018
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