

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1271 of 2012
and M.P.No.1 of 2012

S.K.Abdul Khader

Petitioner/Respondent

Vs.

1. Lubina Farzana

2. S.A.Rafika Parveen

3. S.A.Noorui Arsh @ Sajeedha Sultana ..Respondents/Petitioners

Criminal Revision filed under Section 397 r/w 401 Cr.P.C.,
to set aside the order dated 17.09.2012 passed in M.P.No.816 of
2009 in M.C.No.323 of 2002 on the file of the I Additional
Family Court, Chennai.

For Petitioner : Mr.V.S.Ilango

For Respondents: Mr.R.Murugesan

O R D E R

This criminal revision petition has been filed seeking to
set aside the order dated 17.09.2012 passed in M.P.No.816 of
2009 in M.C.No.323 of 2002 on the file of the I Additional
Family Court, Chennai.

2. For the sake of convenience, the parties will be
referred to by their name.

3. The facts of the case in a nutshell are as under:

3.1 Abdul Khader got married to Lubina Farzana and the
couple has two girl children, viz., Rafika Parveen and Noorui
Arsh @ Sajeedha Sultana.

3.2 Since Abdul Khader neglected to maintain Lubina Farzana and her children, the latter filed M.C.No.323 of 2002 under Section 125 Cr.P.C., in which, the I Additional Family Court, Chennai, by order dated 21.11.2002, directed Abdul Khader to pay a sum of Rs.500/- per month, each (Rs.1,500/- per month totally) to Lubina Farzana and her two children.

3.3 Challenging the order of maintenance, Abdul Khader filed Crl.R.C.No.358 of 2007 before this Court, which was dismissed on 24.07.2008. Thereafter, Lubina Farzana filed M.P.No.816 of 2009 in M.C.No.323 of 2002 under Section 127 Cr.P.C., in which, the Trial Court, by order dated 17.09.2012, has enhanced the maintenance from Rs.500/- to Rs.1,000/- per month, each (Rs.3,000/- per month totally) from 02.12.2009.

3.4 Challenging the order dated 17.09.2012, Abdul Khader has filed the above revision. At the time of admission, this Court passed the following interim order on 11.10.2012 in M.P.No.1 of 2012 in Crl.R.C.No.1271 of 2012:

"There will be an interim stay on condition that the petitioner pays a sum of Rs.40,000/- directly to the respondents 2 & 3/children, by way of D.D., by Registered Post with acknowledgment, being the arrears, within a period of six weeks from the date of receipt of a copy of this order.

The petitioner shall continue to pay a sum of Rs.1,000/- per month to each of the children directly on or before 5th of every succeeding English Calendar month, pending revision.

The petitioner shall also continue to pay a sum of Rs.500/- per month to the first respondent/wife directly on or before 5th of every succeeding English Calendar month, until further orders, pending revision.

On failure to comply with any one of the conditions, the interim order granted today shall stand automatically vacated."

4. Heard Mr.V.S.Ilango, learned counsel for Abdul Khader and Mr.R.Murugesan, learned counsel for Lubina Farzana.

5. The learned counsel for Abdul Khader submitted that Lubina Farzana is working as a Teacher in a private school and earning a sum of Rs.10,000/- per month and also having an own house, from where, she is receiving a rental amount of Rs.20,000/-. He further submitted that the children have attained the age of majority and they will not be entitled to maintenance. These facts were considered by the Trial Court and only thereafter, the maintenance amount was enhanced.

6. The fact remains that the children were minors when the order was passed by the Trial Court and the petitioner had not complied with the interim order passed by this Court till date and hence, he will not be entitled to any equitable relief.

7. A three Judge Bench of the Supreme Court, in Girish Kumar Suneja Vs. CBI¹, has held that revisional jurisdiction is a discretionary one and that the same can be exercised only if the High Court finds that there is an error apparent on the face of the record. The relevant portion of the said judgment is as follows:

"27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition - such a petition can be rejected at the threshold. If the High Court is inclined to accept the revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings. As we see it, there appear to be only two such eventualities of a revisable order and in any case only one such eventuality is before us. Consequently the result of paragraph 10 of the order passed by this Court is that the entitlement of the appellants to file a revision petition in the High Court is taken away and thereby the High Court is deprived of exercising its extraordinary discretionary power available under Section 397 of the Cr.P.C."

8. This Court does not find any infirmity in the order passed by the Trial Court warranting interference.

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In the result, this criminal revision is dismissed as being devoid of merits. Connected M.P. Is closed.

Sd/-

Assistant Registrar(Insp cell)

//True Copy//

Sub Assistant Registrar

nsd

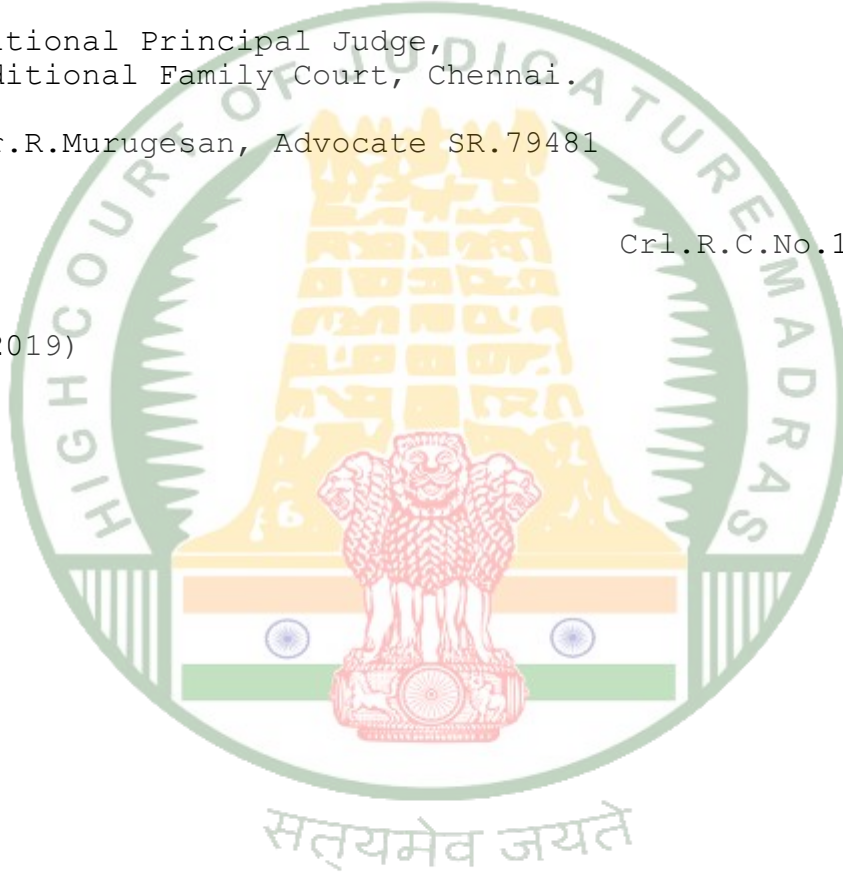
To

The I Additional Principal Judge,
The I Additional Family Court, Chennai.

+1cc to Mr.R.Murugesan, Advocate SR.79481

Cr1.R.C.No.1271 of 2012

Rgn (CO)
CB(18/11/2019)



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