

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Cr1.R.C.No.156 of 2016

Sivasakthi Kanna

...Petitioner

-Vs-

1. Minor G.S.Subhasri

2. Minor G.S.Devadharsini

...Respondents

Minors 1 and 2 rep by their Mother
and guardian S.Sudha Deve

This Criminal Revision Petition is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the order made in M.C.NO.53 of 2014 dated 14.12.2015 by the Family Court, Erode.

For Petitioner : Ms.J.Prithvi

For Respondents : Mr.M.Vignesh
for Mr.C.S.Saravanan

O R D E R

This criminal revision has been filed against the order of maintenance granted by the Court below by order dated 14.12.2015 to the respondents.

2. The brief facts of the case is that the marriage between the petitioner/husband and his wife Sudhadevi took place on 25.11.2001 at Bahavani. Due to their wedlock two children were born to them. First respondent/G.S.Subhasri (minor) was born on 09.09.2002 and the second respondent/G.S.Devadharsini (minor) was born on 29.06.2004. The petitioner/husband is working as a Police Officer and earning Rs.25,000/-p.m. His wife had filed a petition for divorce in HMOP No.142 of 2011 before the Principal Sub Court, Erode and decree of divorce was granted by the Court, thereafter the wife on behalf of the minor children had filed a petition seeking for maintenance in M.C.No.53 of 2014 before the Family Court, Erode claiming amount of Rs.30,000/- for educational expenses, Rs.8,000/- for monthly maintenance and Rs.10,000/- for legal expenses respectively. The respondent/husband had filed a counter stating that the wife filed a petition for divorce and that during the pendency of the divorce petition the wife had filed a release deed in which she

had waived maintenance for the minor children and thereby had stated that the children are not entitled for maintenance. Family Court after hearing both sides had passed an order awarding maintenance at the rate of Rs.2,000/- per month each to the minor children totaling to Rs.4,000/- per month till they attain majority, against which the present revision petition has been filed.

3. The learned counsel for the revision petitioner would submit that a matrimonial proceedings was pending between the petitioner and his wife in H.M.O.P.No.142 of 2011 before the Sub Court, Erode and the wife had entered into an agreement and had executed a release deed waiving the right to claim maintenance for her and her children and that having entered into an agreement and having executed a release deed waiving her right to claim for maintenance for the children cannot file a petition seeking maintenance for the children.

4. Per contra the learned counsel for the respondents would submit that an agreement entered into between the petitioner and his wife waiving the rights of the children to claim maintenance cannot be acted upon against the minor children since the agreement is unlawful and void and against public policy. He would further submit that by entering into such agreement the petitioner cannot absolve his liability or obligation to pay maintenance allowance to the minor children. In support of his contention he relied upon the decision in the case of Ankush Vs. Sau.Ranjana (Bombay) (Nagpur Bench): [2015 ALL MR(Cri) 1560: 2015(2) AIR Bom.R (Cri) 728: 2014 (41) R.C.R.(Criminal)] and the relevant paragraphs are extracted as hereunder:-

8. In view of above, when scheme of Section 125 of Code of Criminal Procedure is considered, it saddles a person with duty to maintain his legitimate or illegitimate minor child subject to conditions laid down therein. The provision vests corresponding right in the child to claim maintenance from his father in the event the child is unable to maintain itself. The obligation of father to maintain his child does not at any point of time shift to any other person including mother having custody of the child. In other words, even if the child is temporarily living with mother or in custody of any other person, the father continues to be under statutory duty to maintain the child. As such, the right with which the child is vested under Section 125 cannot be bartered away, compromised or surrendered, even by his mother. The language of Section 125(1) (b) makes abundantly clear that the law makers under this Section has cast duty upon

father to maintain the child. Having this in mind, reference to "legitimate or illegitimate child" has been made in Section 125(b) and (C) of Code of Criminal Procedure.

9. The case of petitioner based on compromise arrived at between him and respondent No.1 in HMP.No.51/2005 can in no way hamper the right of respondent No.2 to claim maintenance from the petitioner. As the spirit of Section 125 of the Code of Criminal Procedure is to prevent starvation and vagrancy of divorced wife, any compromise or agreement by any of the parties to the marriage would in fact be against the spirit of law and would also be opposed to the public policy as it would be against the social order. It is a basic principle of law that an agreement which is opposed to public policy cannot be enforced in a Court of law. Section 23 of the Indian Contract Act, 1872 renders such an agreement void if its consideration or object is unlawful. If the object or consideration of an agreement would defeat the provisions of any law and if it is opposed to public policy, the agreement would be treated as unlawful and consequently void. Therefore, a clause in an agreement that the wife shall not be entitled to claim maintenance from the husband cannot be used as a defence to proceedings under Section 125 of the Code of Criminal Procedure. The relinquishment of the right to maintenance by the wife will not bar proceedings under Section 125 of the Code of Criminal Procedure.

10. Section 23 of Indian Contract Act, 1872 is reproduced below:

"Section 23 - What considerations and objects are lawful and what not - The consideration or object of an agreement is lawful, unless it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or
is fraudulent; or
involves or implies injury to the person or property of another; or
the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

11. In view of above stated provisions, the agreement entered into between petitioner and respondent No.1 cannot be acted upon against respondent No.2 being unlawful and void and therefore clause in the agreement that respondent No.2 shall not be entitled or even, in that case, respondent No.1 shall not be entitled to claim maintenance from the petitioner husband cannot be used as a defence to proceedings under Section 125 of Code of Criminal Procedure as relinquishment of right of maintenance as above will not bar proceedings for maintenance. Moreover, by entering into such agreement, petitioner cannot absolve his liability or obligation to pay maintenance allowance to respondent No.2, who though admittedly is in the custody of her maternal grandfather, has come out with a specific case that now for the purpose of her better education, she needs monetary assistance and her grandfather being an aged person is unable to provide the same. For this reason also, the recitals in the agreement relied upon by the petitioner cannot be made available to him as a defence to the proceedings for grant of maintenance.

12. In the background of above circumstances, I find it useful to refer to the decision in the case of Nanak Chand V. Chandra Kishore Agarwal, AIR 1970 SC 446) wherein the Hon'ble Apex Court has held that the word "child" in Section 488 of the Code of Criminal Procedure, 1898 did not mean a minor son or daughter and that the real limitation was contained in the expression "unable to maintain itself. Irrespective of whether a son or daughter was a major or minor, a father was bound to maintain the son or daughter if such son or daughter was unable to maintain himself or herself.

5. I have gone through the order passed by the Family Court, Erode. The only ground taken by the husband for refusing maintenance to the minor children is that in a matrimonial proceedings in H.M.O.P.No.142 of 2011 pending on the file of the Sub Court, Erode an agreement was entered into between the petitioner and the guardian/mother of the children, in which the mother of the children had waived the right to claim maintenance for her and her minor children. The spirit of Section 125 of the Criminal Procedure Code is to prevent starvation and vagrancy of the wife and children. This Court is of the opinion that by such an agreement the right of the children to claim maintenance cannot be curtailed. An agreement which is opposed to public

policy cannot be enforced in a Court of law. The relinquishment right of maintenance by the wife will not be a bar for the proceedings under Section 125 of the Criminal Procedure Code in respect of the claim of maintenance by the children. The agreement entered into between the husband and wife will not be a bar in respect of claim for maintenance by the children.

6. In the light of the above discussions, I do not find any infirmity in the order passed by the trial Court. Accordingly the criminal revision petition stands dismissed. The petitioner shall deposit the arrears of maintenance within two months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Judge,
The Family Court,
Erode.

Copy to

The Section Officer,
Criminal Section, High Court, Madras.

+1cc to Mr.C.S.Saravanan, Advocate Sr.87426

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