

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.08.2019
CORAM
THE HONOURABLE MR. JUSTICE P.VELMURUGAN
Crl.R.C.No.336 of 2016

1.Mrs.Mamta Narpat
2.Divya (Minor)
rep. by her mother

.... Petitioners

vs

Mr.Narpat Chand Lodha

.... Respondent

Prayer Criminal Revision is filed under Section 397 r/w 401 of Code of Criminal Procedure, to set aside the order dated 27.01.2016 passed by the learned XVII Additional City Civil Court, Chennai, in Criminal Appeal No.131 of 2015 reversing the order passed by the learned VIII Metropolitan Magistrate Judge passed in M.P.No.414 of 2015 in DVC No.16 of 2014.

For Petitioners : Mr.M.L.Joseph
For Respondent : MrAR.L.Sundaresan,
Senior Counsel
for M/s.S.Thiruvengadam

ORDER

The respondent has filed a petition in H.M.O.P.No.661 of 2014 seeking for divorce. The 1st petitioner filed an interim petition before the VII Metropolitan Magistrate Court, Chennai in M.P.No.2320 of 2014 for interim maintenance and the learned Magistrate passed an interim order dated 01.08.2014 directing the respondent to pay monthly maintenance of Rs.15,000/- for the 1st petitioner and Rs.10,000/- for the 2nd petitioner.

2 Aggrieved by the order passed by the learned VII Metropolitan Magistrate, the respondent/husband filed an appeal before the IV Additional City Civil Court, Chennai in Crl.A.No.219 of 2014 along with a stay petition in Crl.M.P.No.13243 of 2014 wherein an order came to be passed on 12.11.2014, granting stay with condition that the respondent has to pay the entire arrears of maintenance, within a period of one month. Challenging the order in Crl.M.P.No.13243 of 2014, the respondent/husband has again filed a Criminal Revision Case before this Court in Crl.R.C.No.1288 of 2014, this Court passed

an order dated 17.11.2014, directing the respondent to pay a part amount of Rs.60,000/- towards arrears of maintenances and further directed the respondent to continue to pay the monthly maintenance of Rs.15,000/- to the petitioners on or before 5th of every succeeding months.

3 It is submitted that under these circumstances, the main Criminal Appeal No.219 of 2014 was heard finally and a final order came to be passed on 10.09.2015 directing the respondent to pay a sum of Rs.15,000/- to the 1st petitioner and Rs.5,000/- to the 2nd petitioner. Even aggrieved as against the said order, the respondent filed a Crl.R.C.No.1280 of 2015 and after hearing both sides, this Court confirmed the order passed by the appellate Court granting a sum of Rs.20,000/- towards interim maintenance for the petitioners.

4 In the meanwhile, due to the emergency situation to pay school fee to the 2nd petitioner, 1st petitioner/wife has filed a petition in M.P.No.414 of 2015 before the learned VIII Metropolitan Magistrate during March 2014 for a direction against the respondent to pay school fee and other charges for the academic year 2015-2016, being an amount of Rs.40,000/- demanded by the authorities of the School, in which 2nd petitioner was studying. The learned VIII Metropolitan Magistrate, passed an order dated 26.03.2015 directing the respondent to pay the said sum of Rs.40,000/- towards educational fee of the 2nd petitioner for the academic year 2015-2016 and also directed the husband to pay the same directly to the authorities of the School concerned.

5 Aggrieved by the said order passed by the learned VIII Metropolitan Magistrate dated 26.03.2015, the respondent preferred a Criminal Appeal before the learned XVII Additional Judge, XVII Additional City Civil Court, Chennai, in Crl.A.No.131 of 2015. After hearing the arguments of both sides, the appeal was allowed and the order directing the husband to pay the school fee of Rs.40,000/- was set aside.

6 Challenging the dismissal of the relief sought for by the petitioners directing the husband to pay Rs.40,000/- towards school fee, the petitioners are before this Court with the present criminal revision case.

7 It is contended by the learned counsel for the petitioner that since 1st petitioner, being a mother of 2nd petitioner, could not pay the high amount of school fee, which comes to Rs.40,000/-, she has filed the miscellaneous petition

seeking a direction to the respondent/husband to pay the school fee of the 2nd petitioner and the Court below has also rightly allowed the same, but, the lower appellate Court, without considering the factual aspects has disallowed the relief granted by the learned VIII Metropolitan Magistrate, George Town, Chennai - 01, which warrants serious interference.

8 Learned Senior Counsel appearing for the respondent/husband would submit that the respondent is already paying the monthly maintenance to the petitioners and 1st respondent has to meet out all the miscellaneous expenses from the same and further she cannot approach the Court below, when the matter was seized by this Court. Even though, the VIII Metropolitan Magistrate has failed to consider the fact that the petitioner is already paying monthly maintenance to the first petitioner, the XVII Additional Judge, has rightly considered the claim of the respondent/husband and set aside the order directing the husband to pay the School fee of Rs.40,000/- for the academic year 2015-2016, which does not call for any interference. Further the respondent is always ready to pay the school fee to his daughter i.e. 2nd petitioner.

9 Heard the learned counsel for the petitioner and the learned Senior counsel for the respondent and perused the materials available on record.

10 It is seen that relationship of the parties is not in dispute. The limited issue, which has to be decided in this revision is whether the amount of Rs.40,000/- towards school fee for the second petitioner ordered by the Court below is reasonable or not and whether the learned XVII Additional Sessions Judge, Chennai, is right in disallowing the above claim of the petitioners. It is the contention of the respondent that he is paying monthly maintenance to the petitioners and he is also ready to pay the school fee to his child i.e. 2nd petitioner.

11 Considering the submissions of the learned Senior Counsel appearing for the respondent and also subsequent developments in the matrimonial dispute between the parties, the order of the learned XVII Additional Sessions Judge, dated 27.01.2016 passed in Criminal Appeal No.131 of 2015 is hereby confirmed and further, the respondent/husband is directed to pay the actual School fee for the second petitioner/child for every year and the same shall be paid by him directly to the School concerned.

12 With the above direction, the criminal revision case is dismissed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

1. The VIII Metropolitan Magistrate, Chennai.
2. The XVII Additional Judge, City Civil Court, Chennai

+3 ccs to Mr.S.Thiruvengadam Advocate sr69101

Cr1.R.C.No.336 of 2016

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