

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 14.08.2019
CORAM
THE HONOURABLE Mr. JUSTICE P.N.PRAKASH
Crl.R.C.No.774 of 2019

V.Sasikumar

... Petitioner

Vs.

1.S.Keerthana rep by mother by Guardian
2nd respondent
2.S.Vijayakumari

... Respondents

Criminal Revision Petition filed under Sections 397 and 401 Cr.P.C. to set aside the order dated 23.03.2019 passed by the II Additional Judge, Family Court, Chennai in M.P.No.324 of 2019 in M.C.No.418 of 2015.

For Petitioner : Mr.E.Udayachander

O R D E R

This Criminal Revision has been filed to set aside the order dated 23.03.2019 passed by the learned II Additional Judge, Family Court, Chennai in M.P.No.324 of 2019 in M.C.No.418 of 2015

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

3.The short facts are as under :

Vijayakumari got married to Sasikumar on 15.02.2009 and they have a daughter, Keerthana. On account of marital discord, the spouses got estranged. Vijayakumari filed M.C.No.418 of 2015 under Section 125 Cr.P.C. and the same is now pending on the file of the II Additional Judge, Family Court, Chennai. On 14.03.2019, Sasikumar was set ex parte in M.C.No.418 of 2015. Sasikumar filed M.P.No.324 of 2019 in M.C.No.418 of 2015 under Section 126(2) Cr.P.C. for setting aside the ex parte order, which has been dismissed on 23.03.2019 by the trial Court for the following reasons :

"During calling, petitioner and respondent and both counsel present. The petitioner herein had filed above said application to set aside the ex parte order dated 14.03.2019 u/s 126(2) Cr.P.C. Had been find that applicant he deliberately failed to appear at the time of calling this application at 4.50 p.m. The respondent/wife is present. Counsel for respondent also present. For non-appearance of petitioner/husband this application is dismissed."

Challenging the above order, Sasikumar is before this Court.

4.It is seen that Sasikumar has filed his counter in M.C.No.418 of 2015 but, he was not present, when the matter was posted for cross-examination of Vijayakumari. In the opinion of this Court, a fair opportunity should be given to Sasikumar to contest the case. If notice is ordered to Vijayakumari, much prejudice would be caused to her, as that would only further delay the proceedings. When this Court suggested to the learned counsel for Sasikumar that this revision petition would be allowed, if a lumpsum of Rs.50,000/- is paid as costs to Vijayakumari, he consulted Sasikumar and reported to this Court that Sasikumar is agreeable to the said suggestion.

5.In view of the above, Sasikumar is directed to deposit Rs.50,000/- to be construed as arrears of interim maintenance within two weeks from the date of receipt of a copy of this order to the credit of M.C.No.418 of 2015 before the II Additional Family Court, Chennai and on such deposit, the ex parte order dated 14.03.2019 will stand automatically set aside. In the event of failure to deposit the said amount, this revision petition would stand dismissed and it will be open to Vijayakumari to proceed against Sasikumar under Section 128 Cr.P.C. for recovery of maintenance.

This petition is disposed of in the above terms.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gya

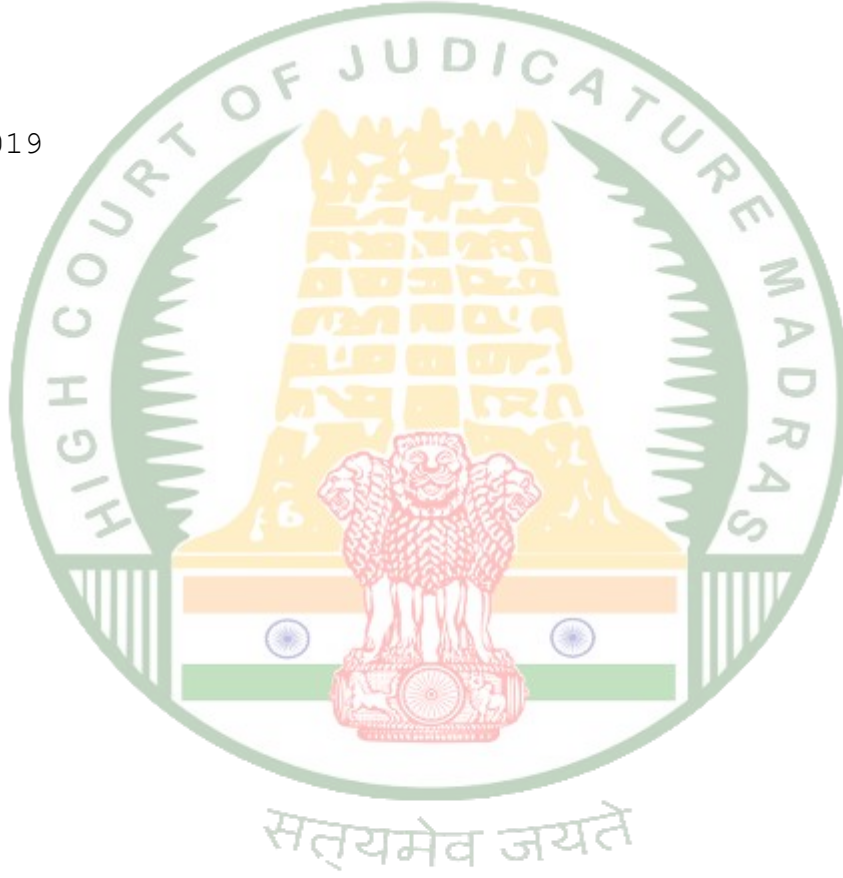
To

The II Additional Judge,
Family Court,
Chennai.

+1 cc to M/s.E.Udayachander Advocate sr69619

Cr1.R.C.No.774 of 2019

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