

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 01.11.2019
CORAM:
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA
Crl.R.C.No.780 of 2019

Senthil Kumar ... Petitioner/Respondent
Vs.

1.Priyalakshmi
2.S.Yashvi Maya
3.S.Aaradhya ... Respondents/Petitioners

[Second and third respondents are minors
represented by their mother as natural guardian]

PRAYER: The Criminal Revision Petition has been filed, under
Section 397 of Cr.P.C, to set aside the order passed by the VI
Additional Family Court, Chennai, in M.P.No.385 of 2018 in
M.C.No.273 of 2017 dated 26.06.2019.

For Petitioner : Mr.Thiagarajan
For Respondents: Mr.S.Arivazhagan

J U D G M E N T

The Criminal Revision Petition has been filed challenging
the order passed by the learned VI Additional Family Judge,
Chennai, in M.P.No.385 of 2018 in M.C.No.273 of 2017 dated
26.06.2019.

2 The brief facts of the case are as follows:

(a) The first respondent/wife had filed M.C.No.273 of 2017
before the Family Court, Chennai, on behalf of herself and her
two children, seeking maintenance against the revision
petitioner/her husband. Since the revision petitioner/husband
has not appeared before the Family Court, he was set ex-parte on
09.02.2018. Thereafter, the Family Court had passed an ex-parte
order dated 20.03.2018 allowing M.C.No.273 of 2017 and directing
the revision petitioner/husband to pay an amount of Rs.75,000/-
per month to the first respondent/wife and Rs.25,000/- each to
the second respondent and third respondent/minor children
totalling to a sum of Rs.1,25,000/- per month as maintenance
from the date of filing of the petition viz., 16.06.2017.
Pursuant to the order, since the revision petitioner/husband had

not appeared before the Court, the Trial Court had also issued non bailable warrant of arrest against him. At that juncture, the revision petitioner/husband had entered appearance before the Family Court through his mother and filed (i) M.P.No.385 of 2018, seeking to set aside the order passed in M.C.No.273 of 2017 (ii) M.P.No.259 of 2019 to recall the warrant and (iii) MP.No.260 of 2019 seeking to permit the revision petitioner/husband to be represented through his mother. The respondent/wife had filed a counter before the Trial Court. However, on 20.06.2019, the power agent/mother of the revision petitioner had consented to pay a sum of Rs.10,00,000/- to recall the warrant of arrest and to set aside the ex-parte order and also consented to pay the amount on or before the first week of August, 2019 and the respondent/wife had also consented to recall the warrant and set aside the exparte order on the undertaking. In view of the above endorsement of the consent made by the power of attorney/mother of the revision petitioner/husband, the Family Court allowed the petition on condition to pay a sum of Rs.10,00,000/- to the respondent/wife by 09.08.2019 and in default the order shall be automatically dismissed.

3 While so, the present revision petition has been filed by the revision petitioner/husband, challenging the conditional order passed by the Family Court, dated 13.08.2019.

4 When the matter had come up before this Court on 08.09.2019, this Court had granted interim stay till 22.08.2019 on condition that the petitioner shall deposit a sum of Rs.5,00,000/- towards arrears to the credit of M.C.No. 273 of 2017. Thereafter, Crl.M.P.No.11868 of 2019 had been filed by the husband/revision petitioner to modify the order passed by this Court on 08.08.2019. However, this Court, vide order dated 29.08.2019 had dismissed the petition for modification and granted one week time to the petitioner till 09.09.2019 for complying with the order dated 08.08.2019. The revision petitioner/husband had complied with the conditional order passed by this Court dated 08.08.2019 by depositing sum of Rs.5,00,000/- and thereafter, had deposited further sum of Rs.5,00,000/- before the Family Court on 31.10.2019. On behalf of the revision petitioner/husband Rs.10,00,000/- has been paid to the credit of M.C.No.273 of 2017 as on date.

5 The main contention of the counsel for the revision petitioner is that there had been miscommunication between the petitioner and the earlier counsel who represented before the Family Court and the Family Court without disposing the set aside petition filed by the petitioner on merits, had simply

passed a conditional order after obtaining consent from the mother of the petitioner, who is the power of attorney and she had on misconception consented to the conditional order on the notion that the amount was paid towards the full and final settlement in M.C.No.273 of 2017 and final orders regarding custody of children.

6 Per contra, the learned counsel appearing for the respondent would submit that the petitioner's mother was well aware that on the date of filing the petition to set aside the ex-parte order an amount of Rs.30,00,000/- was pending as arrears towards maintenance and only on the consent given by the mother of the revision petitioner/husband and acceptance by the respondent/wife, the Family Court had passed the conditional order, directing to deposit the amount of Rs.10,00,000/- on or before 09.08.2019, pursuant to which, the Family Court had also allowed M.P.No.259 of 2019 for recalling the warrant and permitted the revision petitioner to be represented before the Trial Court through his mother. He would submit that the revision has been filed only to drag and delay the payment.

7 Heard both counsel and perused the materials placed on record.

8 This Court has gone through the adjudication notes and the proceedings before the Trial Court. The Trial Court had passed the conditional order only on the consent of the mother of the revision petitioner agreeing to pay a sum of Rs.10,00,000/- on or before 09.08.2019. Admittedly, on that date amount, an amount of Rs.30,00,000 was pending towards arrears.

9 This Court is of the opinion that the Trial Court, had passed the order only on the consent given by the revision petitioner/husband through his mother and thereby had allowed the petition. Having consented to pay the amount of Rs.10,00,000/- (Rupees Ten Lakhs) as a precondition to allow the petition now the mother of the revision petitioner cannot feign ignorance and plead that she had consented to pay the amount due to misconception. This Court finds no infirmity in the order passed by the Trial Court. However, now taking into consideration that the amount of Rs.10,00,000/- has been paid by the revision petitioner before the Trial Court, the order directing the automatic dismissal of M.C.No.273 of 2017 stands set aside and thereby the original order dated 26.06.2019 in M.P.No.385 of 2018 in M.C.No.273 of 2017 passed by the VI Additional Family Court, Chennai stands restored.

10 In the result, the Criminal Revision Case stands closed with the above direction. The respondent/wife is permitted to

withdraw the amounts deposited to the credit of M.C.No.273 of 2017. The Trial Court shall take every endeavor to dispose of M.C.No.273 of 2017 within two months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dua/skn

To

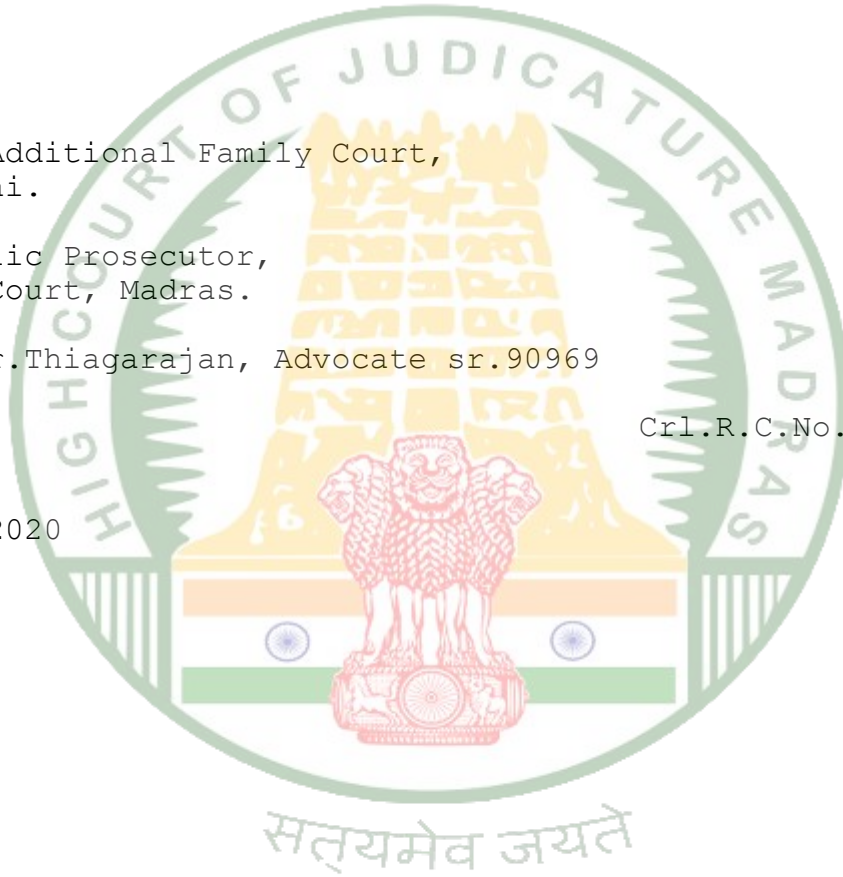
1.The VI Additional Family Court,
Chennai.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Thiagarajan, Advocate sr.90969

Cr1.R.C.No.780 of 2019

rsi(co)
nr 14/02/2020



WEB COPY