

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.911 of 2019
and
Crl.M.P.No.13096 of 2019

1.M.Suganya
2.M.Dharshana, age 18 years
Major represented by mother and natural guardian
3.M.Narain Kishore, age 15 years,
Minor represented by mother and natural guardian
... Petitioners
Vs.
M.Muniasamy ... Respondent

PRAYER: The Criminal Revision Petition has been filed, under Sections 397 and 401 of Cr.P.C, to set aside the order passed by the V Additional Family Court, Chennai, in M.P.No.634 of 2018 in M.C.No.292 of 2014.

For Petitioners: Ms.Raj Genevive Veena

For Respondent : Mr.M.JaiKumar

J U D G M E N T

This Criminal Revision Petition has been filed seeking to set aside the order passed in M.P.No.634 of 2018 in M.C.No.292 of 2014, by the V Additional Family Court, Chennai.

2 The brief facts of the case are as follows:

(a)The first petitioner/wife had filed M.C.No.292 of 2014, seeking for maintenance at the rate of Rs.20,000/- per month for her and Rs.15,000/- per month for her minor children viz., second and third petitioners therein, towards food, clothing, shelter, travelling and medical expenses. While, the case was pending before the Trial Court, the respondent herein/husband had filed a petition under Section 26 of the Hindu Marriage Act, 1955, praying for a direction to permit him to visit his children viz., Dharshana and Narain Kishore on every Saturday and Sunday evening from 4.00 p.m to 6.00 p.m at Chennai or any other place. The wife had filed a counter, stating that the petitioner had filed this petition only with an intention to prolong the case further and stated that the husband till now has not come forward to pay even for the basic shelter to her and her children. The first

child/daughter has attained majority and that with very great difficulty, the petitioner has been taking every effort to educate the children in the best available standards of education. The respondent/husband had abandoned his family from the year 2014 and neglected his responsibilities of upbringing his children and sought for dismissal of the petition. However, the Trial Court had allowed the petition in part and had permitted the respondent/husband to visit his two children on every Sunday between 5 p.m. to 7 p.m., in the house in which the children are residing in the presence of the wife. As against the same, the present revision has been filed.

3 The learned counsel appearing for the revision petitioner/wife would submit that during the pendency of M.C.No.292 of 2014, the first petitioner herein/wife had filed a petition for interim maintenance since the respondent/husband has abandoned the petitioner and her children i.e., from the year 2014 and Maintenance Case had been filed in the year 2014 and the petition for interim maintenance was filed in M.P.No.308 of 2018 by the petitioner/wife and the Trial Court had awarded interim maintenance and as on date the arrears works out to a sum of Rs.6,20,000/-. She would further submit that the respondent/husband who had not shown any interest or inclination to visit the children from the year 2014 and not paid any maintenance, had with the oblique motive to protract the proceedings and evade payment, had filed a petition in M.P.No.634 of 2018, seeking for visitation rights and the learned Judge without taking into consideration, the real intention of the husband, had allowed the petition in part and permitted the respondent/husband to visit the children. She would further submit that first daughter has attained majority and she cannot be compelled to meet her father against her wishes and thereby would seek to set aside the order.

4 Mr.M.Jai Kumar, learned counsel appearing for the respondent would submit that the Trial Court had without proper notice set the husband ex-parte and the husband has filed a petition to set aside the ex-parte order granting interim maintenance and notice has been ordered to the wife. Since the respondent/husband had been prevented from visiting children, he had filed the petition for visitation and the Trial Court had permitted to visit the children.

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

6 Finding that it is a matter arising out of matrimonial dispute and pending from 2014 and the wife and children have not paid any interim maintenance, this Court in order to find the actual bonafides of the respondent/husband, vide order dated 25.09.2019 had directed the

respondent/husband to pay a sum of Rs.1,00,000/- to the first petitioner herein. Though, several opportunities were given to the respondent/husband, he had only paid an amount Rs.50,000/- as on today. Whereas, as per the respondent wife the pending arrears of maintenance amounts to Rs.6,20,000/-.

7 Taking into consideration the above facts and circumstances, this Court is of the considered opinion that the intention of the respondent/husband to visit the children is not genuine; the petition seeking for visitation of children has been filed only for the purpose of delaying and protracting the trial of MC.No.294 of 2014, and to evade paying maintenance. Since, the intention of the respondent/husband is not genuine, the revision deserves to be allowed and the order passed by the Trial Court needs to be set aside.

8 In the result, this Criminal Revision Petition stands allowed and the order passed in M.P.No.634 of 2018 in M.C.No.292 of 2014 by the learned V Additional Family Court, dated 24.06.2019, is set aside. Consequently, connected Miscellaneous Petition is also closed. Since the M.C.No.292 of 2014 is pending for five years, the Trial Judge is directed to accord priority and dispose M.C.No.292 of 2014 within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

dua

To

The V Additional Family Court, Chennai.

+1cc to Mr.M.JaiKumar, Advocate SR.No.90170

+1cc to Mr.Auxilia Peter, Advocate SR.No.90569

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CP(CO)
GMY(10/12/2019)