

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

C.R.P.(PD)No.3184 of 2019 and
C.M.P.No.20753 of 2019

K.R.Srinivasan

... Petitioner

Vs.

1.S.Kalaivani

2.V.Kesavan

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India praying to set aside the order rejecting the application dated 13.08.2019 in unnumbered I.A. in HMOP 395/2019 on the file of the Family Court, Salem and to grant relief to the petitioner as prayed for.

For Petitioner : Mr.R.Loganathan

ORDER

This revision petition has been filed against the fair and decretal order passed in unnumbered I.A. in H.M.O.P.No395 of 2019 dated 13.08.2019 on the file of the Family Court, Salem.

2.Before the Family Court concerned, the petitioner/husband filed the H.M.O.P.No395 of 2019 for dissolution of the marriage between the petitioner and the 1st respondent.

3.The main allegation of the petitioner, who filed the said HMOP, is on the grounds of adultery and cruelty. In order to prove the same, it is alleged by the petitioner that, the 1st respondent now has become pregnant and the 2nd respondent, is the root cause for the same, as despite the separation between the petitioner and the 1st respondent/wife, since the 1st respondent has become pregnant. It is the case of the petitioner that, the 2nd respondent is the reason for that and therefore, in order to prove the ground of adultery, on the part of the 1st respondent, the petitioner wanted to conduct the DNA test on the child to be born to the 1st respondent and therefore, in this context, it is the further case of the petitioner that, the 1st respondent with 2nd respondent and other family members decided to kill the child immediately after the birth, in order to defeat the claim of the petitioner to take for DNA test and

therefore, to protect the child immediately after born, police protection has to be given. Therefore, the petitioner had filed the present unnumbered I.A. on 09.08.2019 under Section 12 of the Family Courts Act read with Section 151 C.P.C. and the same has been rejected, by the impugned order, without numbering, as not maintainable, as against which, the present revision has been filed.

4.I have heard Mr.R.Loganathan, learned counsel for the petitioner, who would submit that, under Section 12 of the Family Courts Act as well as under Section 151 C.P.C., the Court is empowered to give such police protection for few days or a week for the child to be born for the 1st respondent only till DNA test is to be taken and therefore, for the said purpose, on the apprehension of the petitioner that, the 1st respondent and others would join together and kill the child, the child has to be protected, only in that circumstances, such a police protection was sought for. Therefore, the petition was filed and the same could have very well been entertained by the Family Court, especially under Section 12 of the Family Courts Act. Therefore, the present impugned order, rejecting the said application in unnumbered stage as not maintainable, is to be interfered with, he contended.

5.I have considered the submissions made by the learned counsel appearing for the petitioner and I have perused the materials placed before this Court.

6.Section 12 of the Family Courts Act reads thus:

"12.Assistance of medical and welfare experts.-
In every suit or proceedings, it shall be open to a Family Court to secure the services of a medical expert or such person (preferably a woman where available), whether related to the parties or not, including a person professionally engaged in promoting the welfare of the family as the Court may think fit, for the purposes of assisting the Family Court in discharging the functions imposed by this Act."

7.On reading of the same, this Court feels that nothing has been permitted or suggested under the said provision of the Family Courts Act, to seek such a police protection, as has been sought for in the present application by the petitioner.

8.Moreover, as has been rightly mentioned by the learned Judge in the impugned order, in order to protect the evidence as claimed by the petitioner, merely on the apprehension that, somebody would kill the child to be born to the 1st respondent,

the Court cannot show its indulgence seeking police protection round the clock i.e., 24 x 7, at the residential place of the 1st respondent, as that is not possible and moreover, that is totally unwarranted.

9.It is also to be noted that, the main HMOP filed by the petitioner is posted for hearing on 23.09.2019 and on the said date, the application filed by the petitioner to seek for DNA test also posted. Therefore, if at all the petitioner has got any grievance with regard to the pregnancy of the 1st respondent and to the child to be born to the 1st respondent and in order to test the same, he wants to DNA test of the new born child, he will press for that application filed by him in the said HMOP already filed and therefore, in the meanwhile, the present application is totally unwarranted and also not maintainable, in view of the clear provision made in Section 12 of the Family Courts Act.

10.Therefore, this Court is in agreement with the view taken by the Court below, as has been reflected in the impugned order. Hence, it does not require any interference from this Court, accordingly, this revision petition fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

Sgl
To

The Family Court,
Salem.

C.R.P. (PD) .No.3184 of 2019

RR (CO)
SP (09/01/2020)

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