

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 15.04.2019
CORAM:
THE HONOURABLE MR. JUSTICE P.VELMURUGAN
Crl.R.C.No.1406 of 2018

Mohammaed Sami (Minor)
aged about 17 years,
rep. by his mother and Natural
guardian Mrs.Farhana Begum

... Petitioner

Vs

Mr.Shanawaz

... Respondent

PRAYER: Criminal Revision case filed under Sections 397 and 401 of the Criminal Procedure Code, against the order dated 13.06.2018 passed in M.P.No.170 of 2015 in M.C.No.286 of 2002 on the file of the learned VI Additional Judge, Family Court at Chennai.

For Petitioner : Mr.R.Abdulmubeen
For Respondent : Mr.Ash Faq Ali

ORDER

The Revision petitioner is the minor son and the Respondent is the father. The Revision petitioner along with his mother have filed the maintenance case against the respondent in M.C.No.286 of 2002. After hearing the learned VI Additional Principal Judge, Family Court, Chennai passed an order dated 07.10.2003, directing the respondent to pay a sum of Rs.1,000/- towards monthly maintenance to the revision petitioner herein and to his mother. Subsequently, the respondent herein filed a suit in O.S.No.101/2006, for declaring that Talaq (Divorce) dated 26.04.2002 pronounced to the mother of the petitioner herein is valid. The suit was entered into compromise and compromise decree was passed. At that time there was a settlement arrayed between the parties that the respondent is directed to pay one time settlement of Rs.2,30,000/-The said compromise decree was passed on 02.08.2010, even after the decree in O.S.No.101 of 2006, the respondent paid a sum of Rs. 500/- towards monthly maintenance to the revision petitioner, subsequently he has not paid the said amount from 01.02.2014, therefore the revision petitioner filed the petition for recovery of arrears of maintenance under Section 125(3) of Cr.P.C., in MP.No.170/2015 before the VI Additional Family Court, Chennai, and the petition was dismissed stating that already the mother of the revision petitioner accepted the

compromise and also based on the compromise, she received a one time settlement through The State Bank of India, Triplicane Branch in Savings Account No.30050709229 till July 2010. Hence, the revision petitioner filed a present Criminal Revision Case before this Court.

2 The learned Counsel for the petitioner would submit that already the revision petitioner along with his mother filed a maintenance case in M.C.No.286 of 2002 in which the Family Court ordered Rs.500/- for each and total a sum of Rs.1,000/-. Subsequently, the respondent has filed a suit for declaration in that settlement was arrayed and compromise decree was passed and one time settlement was accepted by the mother of the revision petitioner. On reading of the compromise decree it shows that it does not include the revision petitioner's name, hence, the one time settlement is not binding the revision petitioner/ minor son. When the petitioner is having sufficient means and refuses to maintain the child and the child is unable to maintain itself is entitled to get a maintenance.

3 The learned counsel for the respondent would submit that even though the award passed in M.C.No.286 of 2002 was not mentioned in the compromise decree, admittedly the mother of the petitioner has received a full and final settlement of Rs.2,30,000/-. The mother of the petitioner, in pursuance of full and final settlement of Rs.2,30,000/- discharged the respondents herein from future liability of maintaining the petitioner herein. The settlement was arrived between the petitioner and the respondent inclusion of son also. Therefore the learned VI Additional Judge, Chennai, passed an order in M.P.No.286 of 2002, by considering the petition and dismissed it which warrants interference by this Court.

4 Heard and perused the records.

5 The mother of the revision petitioner for herself and the minor son filed a maintenance case in M.C.No.286 of 2002 that was ordered by the Family Court on 07.10.2003. Subsequently, the respondent herein filed a suit in O.S.No.101 of 2006 before the VI Additional Family Court, Chennai that was entered into compromise. A compromise decree was passed on 02.08.2010 and settlement was arrived which shows that the mother of the minor son accepted for one time settlement of Rs.2,30,000/-. Even after the compromise decree, the respondent continuously paid a sum of Rs. 500/- towards the maintenance of the minor son till 2014. Subsequently, the respondent has not paid the amount to them. Therefore now the minor filed the petition under Section 125(3) of Cr.P.C., for recovery of arrears of maintenance. Though the learned counsel for the respondent would submit that subsequently the mother accepted

for one time settlement. therefore he is not entitled to get maintenance. On reading of the compromise decree the maintenance award passed in M.C.No.286 of 2002 was not maintained. In compromise decree they should have mentioned about this M.C.No.286 of 2002 or otherwise subsequently, they would have filed the petition for modification of the order passed in M.C.No.286 of 2002 either for cancellation or modification or alteration. Even otherwise on compromise decree passed between the father and the mother will not bind in the minor child till the order passed in M.C.No.286 of 2002 dated 07.10.2003 is set aside or modified.

6 Therefore, the revision petitioner is entitled to receive the maintenance amount until he attained majority or set aside by the competent court. The order passed by the Family Court, Chennai is in perverse therefore the order passed in MP.No.170/2015 in M.C.No.286 of 2002 is set-aside and the revision is allowed. The respondent is directed to pay entire arrears amount within one month from the date of receipt of this order.

Sd/-

Assistant Registrar (CS-III)

// True Copy//

Sub Assistant Registrar

jrs/sbn

To

The VI Additional Judge,
Family Court at Chennai.

+1CC to Mr.R.Abdulmubeen, Advocate, SR.No.36960.

+1CC to Mr.Mr.Ash Faq Ali, Advocate, SR.No.36809.

Cr1.R.C.No.1406 of 2018

SPD (CO)
CSR(11/12/2019)

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