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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2021

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.RC.No.1110 of 2016

and

Crl.M.P.No.9645 of 2016

S.K.Kamal Chand Chordia

...Petitioner/Petitioner

Vs.

Sushmitha @ Payal Kumari

...Respondent/Respondent

PRAYER: Criminal Revision Petition filed under Section 397 and 401 of Criminal Procedure Code to call for the records relating to the conviction imposed in the judgment dated 19.07.2016 made in C.A.No.47 of 2015 on the file of the Principal Sessions Court, Cuddalore confirming the order dated 26.05.2015 made in C.M.P.No.130 of 2014 in Crl.M.P.No.5731 of 2013 on the file of the learned District Munsif cum Judicial Magistrate, Parangipettai and set aside the same.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.B.Jawahar

O R D E R

The petitioner has filed this petition to call for the records in C.M.P.No.130 of 2014 in Crl.M.P.No.5731 of 2013, on the file of the learned District Munsif cum Judicial Magistrate, Parangipettai and quash the same.

2. The case of the petitioner is that the petitioner and the respondent got married on 23.04.2014 and they were blessed with two sons. First son, viz., Ajay Veevyn was born on 31.05.2005 and second son, viz., Vijay Veevyn was born on 30.12.2009. However, right from the inception, the respondent has disliked the company of the petitioner for no justifiable cause and the petitioner has tolerated the cruelty committed by the respondent for sometime and unable to tolerate over the same for further, he has filed a petition for divorce in H.M.O.P.No.177 of 2013, on the file of the learned Principal Sub Judge, Villupuram. Further it is alleged by the petitioner that pending H.M.O.P.No.177 of 2013, the respondent had filed a



complaint dated 26.11.2013 before the Protection Officer, District Social Welfare Office, Cuddalore, alleging that she was subjected to harassment at the hands of the petitioner and the said petition was forwarded to the learned District Munsif Cum Judicial Magistrate, Parangipettai for necessary action. Accordingly, the said complaint filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005, was taken on file in Crl.M.P.No.5731 of 2013. While so, the respondent purposely filed another petition dated 10.01.2014 under Section 23 of the P.W.D.V.A Act, 2005, seeking custody of the first son S.K.Ajay Veevyn and the said petition was taken on file in C.M.P.No.130 of 2014. However, the said petition after contest, came to be allowed in favour of the respondent on 26.05.2015. Challenging the said order of custody of the first son, the petitioner has filed C.A.No.47 of 2015, on the file of the learned Principal Sessions Judge, Cuddalore. The said appeal was also dismissed on 19.07.2016 and challenging the same, the present Revision Petition is filed before this Court.

3. The learned counsel appearing for the petitioner submitted that though the Lower Court has granted the custody of the first son in favour of the respondent, when this matter was taken up before this Court, this Court has directed the petitioner to produce the boy and thereafter, the boy was produced before this Court and while interacted with the boy, he expressed his willingness to go along with his father and thereby, this Court has granted interim stay and till date, the boy is under care and custody of the petitioner and he is taking care of all his future well beings. Hence this Court may absolute the interim stay and permit the petitioner to raise all other issues in the Crl.M.P.No.130 of 2014, pending before the District Munsif cum Judicial Magistrate, Parangipettai.

4. The learned counsel for the respondent submitted that after the order of stay granted by this Court, no one is taking care of the boy and he was admitted in the Boarding School at Ooty and thereby he is isolated and experienced to emotional disturbances. As a mother, she is entitled to take care of her son's future well being and safety and therefore, prays for dismissal of this petition and request the custody of the first son, as granted by the Trial Court.

5. This Court has carefully considered the rival submissions and also perused the materials available on record.

6. When this Court expresses opinion as to the visitation of the respondent to see the first son, the petitioner husband has no serious objection for visit of his wife to the boarding school at Ooty and see his son, where he is said to have been pursuing his studies.



7. In view of the consent expressed by the petitioner husband, the interim stay granted by this Court on 30.09.2016, is made absolute and further this Court is of the view that if the boy, S.K.Ajay Veevyn, is willing to see his mother, the respondent wife is granted permission to visit her first son at the JSS International School Ooty, once in a month, preferably during weekends and the same shall be ascertained and communicated to the petitioner in advance.

8. This Criminal Revision Petition is disposed of with the above directions.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Court,
Cuddalore.
2. The District Munsif cum Judicial Magistrate,
Parangipettai.
3. The Public Prosecutor(Crl side),
High Court, Madras.

+lcc to Mr.N.Manokaran, Advocate, S.R.No.42211
+lcc to Mr.B.Jawahar , Advocate, S.R.No.42774

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NSK 11/11/2021