

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1153 of 2019 and
Crl.M.P.No.15533 of 2019

Minor Deekshitha
Rep by his mother and natural Guardian,
Tmt.Padmapriya F/A 35,
Wife of V.Rajkumar,
Periyakadai Street,
Kaspa Town,
Dharapuram Taluk,
Thiruppur District. Petitioner

Vs.

V.Rajkumar Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order dated 15.10.2019 in CMP.No.4766 of 2019 made in M.C.No.32 of 2017 on the file of the Judicial Magistrate, Dharapuram by allowing this Criminal Revision Petition.

For Petitioner : Mr.C.Ramaraj for
Mr.M.Guruprasad

For Respondent : No Appearance

ORDER

The petitioner and her mother filed a maintenance case against the respondent in M.C.No.32 of 2017 before the learned Judicial Magistrate, Dharapuram. During the pendency of the maintenance case in M.C.No.32 of 2017, the respondent, who is the father of the petitioner, has filed a petition under Section 243(2) Cr.P.C., in C.M.P.No.4766 of 2019 in M.C.No.32 of 2017 to examine the Branch Manager of H.D.F.C. Bank, Dharapuram Branch and the same was allowed by the learned Judicial Magistrate, Dharapuram, by order, dated 15.10.2019. Challenging the same, the petitioner is before this Court.

2.The learned counsel for the petitioner would submit that originally, the petitioner and her mother filed a maintenance case against the respondent and thereafter, the mother of the petitioner withdrew her claim of maintenance and now, the maintenance case is pending only for maintenance to the petitioner alone. During the pendency of the maintenance case, the respondent has filed a petition before the learned Judicial Magistrate, Dharapuram under Section 243(2) Cr.P.C., to examine the Branch Manager, HDFC Bank, Dharapuram to prove the fact that the mother of the petitioner is working in the said bank and she is an earning member. The learned Judicial Magistrate, Dharapuram, by order, dated 15.10.2019 in C.M.P.No.4766 of 2019 in M.C.No.32 of 2017 allowed the petition and ordered to issue summon to the Branch Manager, HDFC Bank, Dharapuram.

3.The learned counsel for the petitioner would further submit that the order of the learned Magistrate is against the law that the mother of the petitioner, first of all, is not working in the said bank. Therefore, he need not be summoned and examined. Further, even assuming that the mother of the petitioner is a earning person and it is not a disentitlement of the daughter/petitioner to claim maintenance from her father. Hence, summoning the Branch Manager, HDFC Bank, Dharapuram Branch would prolong the maintenance case to decide. The learned Judicial Magistrate, Dharapuram failed to consider the legal as well as factual aspects while deciding the petition under Section 243(2) Cr.P.C., and caused prejudice to the petitioner.

4.No representation for the respondent either in person or by his respective counsel.

5.Heard and perused the records.

6.The petitioner has filed the maintenance case against her father/respondent. Originally, the mother of the petitioner has filed a petition for maintenance for herself and her daughter/petitioner. Subsequently, the mother of the petitioner withdrew the maintenance case concerning herself. During the pendency of the maintenance case, the respondent has filed a petition under Section 243(2) Cr.P.C., to examine the Branch Manager, HDFC Bank, Dharapuram to prove the fact that the petitioner is working in the said bank and she is an earning member. Even assuming that the mother of the petitioner is not working in the said bank, if the Manager also corroborates the same, it is up to the petitioner to establish the fact that her mother is not working in the Branch. However, sending summon to the Branch Manager, HDFC Bank, Dharapuram will no way cause prejudice to the petitioner.

7. Under these circumstances and mere sending summon to the Branch Manager, HDFC Bank, Dharapuram Branch will no way affect the case of the petitioner. Therefore, the Criminal Revision is liable to be dismissed and it is, accordingly, dismissed. However, the maintenance case in M.C.No.32 of 2017 is pending from the year 2017, the learned Judicial Magistrate, Dharapuram is directed to dispose of the maintenance case in accordance with law within a period of three months from the date of receipt of a copy of this order. Consequently, the connected Criminal Miscellaneous Petition is closed. Registry is directed to communicate the order to the learned Judicial Magistrate, Dharapuram forthwith.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate,
Dharapuram.

+1cc to Mr.M.Guruprasad, Advocate Sr.5847

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