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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.07.2024

Pronounced on : 06.12.2024

CORAM:

THE HON-BLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1734 of 2024

Shruthi Thilak

... Petitioner

Vs.

Dr.Prabhu Thilak

... Respondent

PRAYER: The Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the Fair and Decreetal Order, of the III Additional Family Court, Chennai, dated 09.01.2024 in I.A. No.1 of 2023 in HMOP.No.1320 of 2023 and to order the said I.A., as prayed for.

For Petitioner : Mr.T.M.Hariharan
For Mr.G.Govarthanan

For Respondent : Mr.M..Ramamoorthi
For Mr.S.N.Parthasarathy

ORDER

Challenging the Fair and Decreetal Order, dated 09.01.2024, passed by the learned III Additional Family Court, Chennai, in I.A. No.1 of 2023 in H.M.O.P.No.1320 of 2023, the present Civil Revision Petition has been filed.



2. The Interim Application in I.A.No.1 of 2023 has been filed by the petitioner, before the III Additional Principal Family Court at Chennai, under Section 26 of the Hindu Marriage Act, to provide visitation rights to the petitioner to meet and interact with her two children viz., Athulya P.Thilak, aged 16 years and Mahorjith P.Thilak, aged about 9 and to visit the minor children on every Saturday and Sunday between 10.00 a.m., and 5.00 a.m., in a common place and to meet the children on their Birthdays, Deepavali, Pongal and other Festival Days and to interact with the children through video calls and to provide interim custody of the child during their vacation with the petitioner. The learned III Additional Principal Family Judge, Chennai, dismissed the said application pointing out various allegations and pending litigation against the petitioner. Aggrieved over the same, the petitioner is before this Court with the present Civil Revision Petition.

3. Mr.T.M.Hariharan, learned counsel appearing for the Revision Petitioner would submit that the Family Court has proceeded as though the petitioner has been convicted in the POCSO case overlooking that the wild allegations levelled by the respondent have no legal or factual basis and are yet to be established in the manner known to law. The reasoning of the Family Court that the petitioner will influence or manipulate the mind of the children and truth may not come out is speculative and baseless. The right of mother to interact with her children cannot be belittle in the manner done. The



further reasoning that the mother cannot see the child unless the Court examines the truth of the adultery charges levelled against the petitioner by the respondent is completely erroneous, but the respondent is also guilty of adulterous life and the Family Court erred in applying different yardstick to the petitioner and the respondent. The right of the mother to see her minor children cannot be set at naught by making scandalous allegations, which are yet to be established. It is further submitted that the respondent, as a father, cannot prevent the petitioner from meeting the children by merely making wild allegations and taking advantage of the fact that for the time being he has control over the child and is able to prevail over the child to depose as per his dictum.

4. The learned counsel appearing for the petitioner further contended that the Family Court ought to have seen that the allegations levelled cannot obliterate the rights and duties of the mother to interact with the children or negate the rights of the minor children to enjoy the love, care and custody of their mother. The Family Court passed the impugned order in a cryptic manner accusing the petition based on the allegations made in H.M.O.P.No.1320 of 2023 and failed to discuss about the entitlement of the petitioner being a mother to visit her children. A bare reading of the impugned order itself reveals that the Family Court passed the impugned order in judgmental approach and biased in nature. The Family Court discussed about the allegations levelled against the petitioner in



HMOP, intentionally failed to discuss the plea taken by the petitioner against the respondent and the entitlement of visitation right.

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5. It is the further contention of the learned counsel for the petitioner that the Family Court failed to consider the paramount interest of the child that when the children were in the custody of the respondent, the minor daughter Athulya P.Thilak sent a message in whatsapp stating that she consumed excess cough syrup with an intention to end her life. Shocked by the message, when the petitioner contacted the respondent, he evaded the reason and the respondent was busy in making arraignments to arrest the petitioner, when she come to meet her daughter in the hospital in another false case foisted by the maid of the respondent. None of the above facts specifically denied in the counter affidavit and the Family Court intentionally avoided to discuss the same in the impugned order to protect the respondent for the best reasons known to it. The Family Court shielding the respondent through its impugned order and avoided to consider the jeopardize environment of the children, when they are under the custody of the respondent. Hence, the learned counsel prayed this Court to allow the Revision.

6. Mr.M.Ramamoorthi, learned counsel appearing for the Respondent would submit that the sole intention of the petitioner is to threaten and prevent the victim children, who are aged about 15 and



offences and with this intention the petitioner has approached this Court seeking visiting rights i.e., to visit the minor children on every Saturday and Sunday between 10.00 a.m., to 5.00 p.m., in a common place and to meet the children on their Birthdays, Deepavali and Pongal and all other festival days, to interact with the children and over phone through video calls and to provide interim custody of the children during their vacation with the petitioner. Further, the petitioner is an accused in the POCSO case in FIR No.03/2023 on the file of Vadapalani AWPS and the same is charge sheeted in SPL.S.C.No. 69 of 2024 pending trial before the Special Court Exclusive Trial for POCSO case, Chennai. The Petitioner with ulterior motive wants to visit the minor children. The Petitioner conspired with her brother Vijay Anand, who is the first accused in the POCSO case, and caused severe sexual harassment on several occasions on the minor child. The Petitioner has suppressed the facts and has caused severe mental and physical agony to the minor child. The Petitioner has approached this court in order to threaten and intimidate the minor child to withdraw the POCSO case against herself and her brother.

7. The learned counsel for the respondent further submitted that earlier, a Division Bench of this Court while deciding the Habeas Corpus Petition filed by the Petitioner, after interacting with the Children and after knowing the wishes of the children, had decided that the custody of the Children with the father is not illegal. The son



of the Respondent is the witness in the POCSO case filed against the Petitioner and the only friend and intimate of the victim child, he may indirectly influence the victim girl through the brother of the petitioner, which will be detriment to the trial of the POCSO case and to the welfare of the minor children. The petitioner conspired with her brother Vijay Anand, who is the first accused in the above-mentioned case and caused severe sexual harassment on several occasions to the minor child. Further, the minor child has given 164 Cr.PC statement before the XVI Metropolitan Magistrate, Chennai, about the role of the petitioner. The minor child's statement against this Petitioner in the 164 Cr.pc statement are very serious in nature. This Court, while dismissing the Quash Application filed by this petitioner has placed the extracts of the 164 Cr.pc statement in its judgement, that the Petitioners's Brother Vijay Anand had continuously causing aggravated Sexual Assault against the Minor girl, whenever he get chance, when the same has been informed to the Petitioner, she had abated her brother in doing so.

8. It is the further contention of the learned counsel for the respondent that the petitioner wants to threaten and prevent the victim child from deposing the truth before the Special Court for POCSO Act cases. The Petitioner approached the Learned III Additional Family Judge, at Chennai by filing I.A.No.01 of 2023 in H.M.O.P.No. 1320 of 2023, seeking Visitation Right of the children and the same was dismissed by the Learned Judge in accordance with law.



Further, the 8 year old minor son was beaten black and blue on many occasions by the petitioner due to her alcoholic behavior and ill temperament. The 8 year old son has deposed before the Court that he does not want to go with the petitioner and now the children are living with the respondent happily. Further, the petitioner misuses her professional credentials of being an advocate to do nefarious activities and indulges in criminal behaviour and threatens others by saying that she is an advocate and that the Bar Council will come to her rescue no matter whatever cases she would get involved in.

9. The learned counsel for the respondent would further submit that the respondent filed H.M.O.P.No.1320 of 2023, and the same is pending before the III Additional Family Court, Chennai, seeking dissolution of the marriage on the grounds of adultery and cruelty. The petitioner is a nymphomaniac and has extra marital relations with other persons. The Petitioner caught red handed on camera, when she was having sexual relationship with other men and the facts have been presented before the Family Court more elaborately in the H.M.O.P.No. 1320 of 2023. If this Court show any undue sympathy on the petitioner, it will do more harm to the Children. The Petitioner in order to escape from her misdeeds has approached this Court seeking visitation rights. Hence, the learned counsel prayed for dismissal of the Revision.



10. I have heard the learned counsel appearing on either side and perused the materials available on record.

11. On perusal of the records it is seen that the marriage between the petitioner and the respondent was solemnized on 24.10.2007 at '1008 Sivan Temple', Ariyanur, Salem, as per Hindu Rites and Customs. Out of the wed-lock, they have blessed with one female child and a male child, by name, Athulya P.Thilak and Mahorjjith P.Thilak and they are now aged about 14 and 8 respectively. Due to some matrimonial dispute, the petitioner and respondent now living separately. The children are living with the respondent.

12. Since the children are with the custody of the respondent, the petitioner filed an Application in I.A. No.1 of 2023 in H.M.O.P.No.1320 of 2023 before the learned III Additional Family Court, Chennai, seeking to provide Visitation Rights to the petitioner to meet and interact with her two minor children, on every Saturday and Sunday between 10.00 am to 5.00 p.m in a common place fixed by this Court, on their birthdays, Deepavali and Pongal and all other festival days, to interact with the children and over phone through video calls and to provide interim custody of the child during their vacation with the Petitioner. The Family Court, negatived the prayer of the petitioner on the ground that the petitioner has been involved in many criminal cases and is facing trial. Challenging the Fair and



Decreetal Order, passed by the learned III Additional Family Court, Chennai, dated 09.01.2024 in I.A. No.1 of 2023 in H.M.O.P.No.1320 of 2023, the petitioner is before this Court with the present Revision.

13. A bare reading of the impugned order passed by the Family Court I.A.No.1 of 2023 in H.M.O.P.No.1320 of 2023 would reveal that it revolves around the allegations against the petitioner and involvement of the petitioner in the criminal cases. The question arises before the Court pertaining to the custody of minor child, the matter is to be decided not on consideration of the legal rights of the parties, but on the sole and predominant criteria of what would best serve the interest and welfare of the minor children. The petitioner staked her claim for visiting rights as a mother to meet her children. As biological mother, her concern for the well-being of her children and to meet them periodically cannot be under-played. Section 21 of the Act of 2005 envisages with clarity and precision that in appropriate cases, Courts at any stage of hearing of the application for protection order or any other relief under this Act, can grant temporary custody of any child or children to the aggrieved person or to the person making an application on her behalf. Merely because petitioner is having different place of abode cannot be a significant factor for denying her right to visit her children. The primary reason in disallowing the visitation right to the petitioner, is for the reason the petitioner / mother is facing charges under POCSO Act. On perusal of the charge sheet it is seen the gravamen of the charges are not



against the petitioner / mother. It is primarily on the brother of petitioner / Maternal Uncle. This Court cannot lose sight of the fact that the case stems out get magnified after the matrimonial discard between the petitioner /mother and respondent/father.

14. No doubt, a mother, can very well protect the interest of the minor children, more particularly, passing through the formative stage of life. It is a matter of common knowledge that at this stage, the mother can be the best friend, guide and mentor for the growing daughter. The girl child, at this stage, requires the assistance of her mother, more than that of a father. Not that, the father is not having any love and affection for the minor, but however, considering the age of the child, she is bound to have more attachment with the mother. In totality of circumstances, in my considered view, the Family Court committed a manifest error of law and fact in declining the prayer of the petitioner for visitation rights to meet her minor children. In view thereof, the impugned order, is liable to be interfered with in exercise of Revisional jurisdiction, since order, declining prayer for visiting rights of the petitioner, are not satisfying the test of judicial propriety. More so, when the Division Bench of this Court in H.C.P.No.2607 of 2022 in order dated 22.12.2022 has granted access to the petitioner to her Children. The relevant Para No.6 is extracted hereunder:-

“6. The learned counsel for the petitioner submitted that the petitioner may be permitted to have access to the children through mobile phone, for which, the learned counsel for the respondent



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stated that the 5th respondent would have no objection if the children speak to the petitioner via mobile phone.

Accordingly, this Habeas Corpus Petition is closed with liberty tot the parties to work out their remedy in the manner known to law before the appropriate forum. Until then, the children will be in the custody of the 5th respondent.”

15. In the result, the Civil Revision Petition is allowed and the impugned order passed by the learned III Additional Family Judge, Chennai, dated 09.01.2024 in I.A. No.1 of 2023 in H.M.O.P.No.1320 of 2023, is set aside. The petitioner is granted visitation rights to meet and interact with her two children viz., Athulya P.Thilak, aged 16 years and Mahorjjith P.Thilak, aged about 9, on every Saturday and Sunday, for two hours, preferably, between 4.00 p.m., to 6.00 p.m., or any two hours as per convenience, in a common place like any Mall, wherein the place is wired with closed circuit T.V. Coverage, the petitioner to have access to her children through Mobile phone, interact through video calls. The respective counsels can act as moderators in this regard. No costs.

06.12.2024

Speaking Order/Non Speaking Order
Index : Yes/No
Internet : Yes
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To

The III Additional Family Court,
Chennai,



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M.NIRMAL KUMAR, J.

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**Pre-Delivery Orders made in
C.R.P.No.1734 of 2024**

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