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Crl.R.C.No.2068 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 03.04.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.DHANDAPANI**

**Crl.R.C.No.2068 of 2023 and  
Crl.M.P.No.18982 of 2023**

1. Prema Vidhya Jegatha  
2. Minor Sanjay Mani ... Petitioners  
(Minor represented by guardian and mother Prema  
Vidhya Jegatha)

**Vs.**

Sankaralingam ... Respondent

**PRAYER :** Criminal Revision filed under Section 397 r/w Section 401 of the code of Criminal Procedure, 1973 to call for records pertaining to C.M.P.No.3 of 2019 in M.C.No.184 of 2015 on the file of the Additional Principal Family Court dated 16.10.2023, Coimbatore and set aside the same.

For Petitioners : Mr.K.Balasubramanian

For Respondent : Mr.D.Bennigton

**ORDER**

The present criminal revision petition has been filed to set aside the order dated 16.10.2023, passed by the learned Additional Principal Family Judge, Coimbatore, in C.M.P.No.3 of 2019 in M.C.No.184 of 2015.



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2. The petitioners are the wife and son and the respondent is the husband. The marriage between the first petitioner and the respondent was solemnized on 11.06.2003 as per the Hindu Rites and Customs Act. Out of the wedlock, two children were born. The second petitioner herein is living along with the first petitioner. The another child, viz., Dhakshinya Shree, living along with the respondent. Due to matrimonial dispute and misunderstanding between them, they were living separately. The first petitioner / wife filed H.M.O.P.No.1157 of 2012 seeking divorce on the ground of cruelty. The respondent / husband also filed H.M.O.P.No.857 of 2013 seeking restitution of conjugal rights. Further, the petition filed by the first petitioner / wife in H.M.O.P.No.1157 of 2012 seeking divorce was granted vide judgment and decree dated 09.02.2015 and hence, H.M.O.P.No.857 of 2013 filed by the respondent / husband was dismissed for default by order dated 06.04.2015. In the meantime, the first petitioner / wife filed a petition seeking maintenance in M.C.No.184 of 2015 on the file of the Additional Family Court, Coimbatore. The learned Judge, on considering the facts and circumstances of the case, allowed the petition by directing the respondent / husband to pay a sum of Rs.15,000/- per month to the



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petitioners on or before 7<sup>th</sup> of every English calender month. The respondent / husband is also directed to pay arrears of maintenance from the date of filing of the petition and till date. The respondent was irregular in paying maintenance and hence, the first petitioner has filed a petition under Section 125 (3) of Cr.P.C to execute the order of maintenance and the same is still pending. In the meantime, the respondent / husband filed a petition in C.M.P.No.3 of 2019 in M.C.No.184 of 2015 by permitting him to visit the second petitioner. However, without considering all the facts and circumstances and that the pending execution petition filed by the first petitioner, the Court below mechanically ordered for visitation rights by permitting the respondent / husband to meet the second petitioner in 1<sup>st</sup> and 3<sup>rd</sup> Sundays of every month between 10.00 a.m. to 01.00 p.m. Challenging the said order, the present revision has been filed by the wife.

3. The learned counsel appearing for the revision petitioners submitted that as per Section 125 Cr.P.C, maintenance can be claimed for the aged parents, destituted wife and children and the Court below has no power ordering visitation rights. However, there is an exhaustive remedy



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for seeking visitation rights before the District Court under Guardians and Wards Act, 1890 or under Section 26 of Hindu Marriage Act, 1955. However, without any jurisdiction or source of power, the Court below entertained the petition filed by the respondent and ordered for visitation rights, which is beyond its jurisdiction and on the sole ground, the present petition has been filed.

4. The learned counsel for the respondent has fairly conceded the fact and submitted that this Court may grant liberty to the respondent to file a separate petition before the District Court either under Guardian and Wards Act or under Section 26 of the Hindu Marriage Act.

5. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

6. Considering the fact that the Court below has no power to order for visitation rights under Section 125 of Cr.P.C. and that the trial Court without considering the same, has entertained the petition filed by



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the respondent and ordered for visitation rights, this Court is inclined to set aside the order passed by the Court below and accordingly, the order dated 16.10.2023 passed by the learned Additional Principal Family Judge, Coimbatore, in C.M.P.No.3 of 2019 in M.C.No.184 of 2015 is set aside. However, the respondent / husband is at liberty to file a petition seeking visitation rights before the District Court either under Guardians and Wards Act, 1890 or under Section 26 of the Hindu Marriage Act, 1955.

7. Accordingly, the Criminal Revision is allowed with the above directions. Consequently, connected miscellaneous petition is closed.

**03.04.2024**

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji

To

The Additional Principal Family Court,  
Coimbatore.



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**M.DHANDAPANI, J.**

vji

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