



Crl.R.C.(MD)No.768 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.10.2024

Pronounced on : 06.11.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.768 of 2024

and

Crl.M.P.(MD)No.8237 of 2024

S.B.Booja

... Petitioner

Vs.

P.Aadharsh
represented by his father and the
power of Attorney Agent Pandiaraj

... Respondent

Prayer : This Criminal Revision Petition filed under Sections 438 r/w 442 B.N.S.S., to set aside the order dated 23.05.2024 made in Cr.M.P.No.103 of 2024 in M.C.No.207 of 2023, on the file of the learned Family Court, Madurai and allow this Criminal Revision Petition.

For Petitioner : Mr.K.Anand

For Respondent : Mr.K.Rajaram



Crl.R.C.(MD)No.768 of 2024

WEB COPY

ORDER

The Criminal Revision is directed against the order passed in Cr.M.P.No.103 of 2024 in M.C.No.207 of 2023 dated 23.05.2024 on the file of the Family Court, Madurai, allowing the application filed under Order 3 Rule 1 and 2 and Section 151 C.P.C. seeking permission to defend the maintenance case through his power agent, appointed vide power deed dated 24.01.2024.

2. The petitioner has laid a maintenance claim under Section 125 Cr.P.C. in M.C.No.207 of 2023 and the same is pending on the file of the Family Court, Madurai.

3. The case of the respondent/husband is that the respondent is presently working in Indian Army and is now working as Major at Jodhpur, Rajasthan State, that the respondent can avail leave for one month once in the year as per his service condition and hence, he is unable to appear before the Court in all the hearings, that the respondent had executed a power of attorney deed dated 24.01.2024 in favour of his father



Crl.R.C.(MD)No.768 of 2024

WEB COPY

authorizing him to conduct judicial proceedings on his behalf, that the respondent is ready to appear before the Court as and when required and he is also prepared to appear before the Court through Video Conferencing as directed by the Court and that therefore the power of attorney deed has to be recognized and his father may be permitted to conduct the main case as power agent of the respondent.

4. The petitioner/wife has filed a counter statement raising objections and stating that the contention of the respondent that he is not able to come frequently and appear before the Court is not correct, that the respondent had visited Madurai in the month of January 2024 and filed HMOP divorce case against the petitioner, that the petitioner came to know that the Superior Army Officer will grant a special leave for appearing Court cases as per the Indian Military Law, that power agent appointed by the respondent is none other than his father and is one of the accused in D.V.O.P.No.179 of 2023 on the file of the Additional Mahila Court, Madurai, that the respondent had harassed the petitioner by trying to break her Thaali and demanded for gold and diamond from the petitioner, that the power agent had thrown out all the belongings kept in



Crl.R.C.(MD)No.768 of 2024

the matrimonial house in the street and scolded the petitioner and her father in filthy language, that personal evidence or affidavit or petition or counter or any statement produced by the power agent with regard to the present maintenance case may not be accepted or allowed in this case, that the petitioner has no objection for the respondent appearing through Video Conferencing and that the power deed executed on 24.01.2024 is not properly executed and is a defective one.

5. Admittedly, the petitioner is an Army Major now working at Jodhpur, Rajasthan State.

6. No doubt, generally in the Family Court, the parties are expected to appear in person for the hearings.

7. As already pointed out, the respondent has appointed his father as power agent authorizing him to appear and engage an advocate for prosecuting or defending any proceedings vide power of attorney deed dated 24.01.2024 and on that basis, the above application came to be filed to recognize his father as power agent and permit him to continue the



Crl.R.C.(MD)No.768 of 2024

proceedings on behalf of the respondent.

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8. The main objection of the petitioner is that any evidence, statement, counter, affidavit submitted by the power agent cannot be accepted.

9. It is settled law that power of attorney holders cannot give evidence about the facts which are within personal knowledge of persons they represent. The power agent can only depose about the facts within his personal knowledge and not about those facts which are not within his knowledge or within the personal knowledge of the person who he represents. Hence, the power agent cannot adduce evidence about the facts which are within the personal knowledge of the respondent/principal. But at the same time, the power agent can very well appear on behalf of the respondent and defend the maintenance proceedings.

10. It is pertinent to note that Indian Evidence Act does not apply to



Crl.R.C.(MD)No.768 of 2024

the Family Court proceedings. Section 14 of the Family Courts Act allows the Family Court to receive any evidence that may help to resolve a dispute in its opinion which is relevant or admissible under the Evidence Act, which includes reports, statements, documents, informations and other matters. If that be the legal position for receiving evidence, the objections of the petitioner that the power of attorney deed is not properly executed or defective cannot be gone into, in the present proceedings. It is not the case of the petitioner that her husband is not working in Army or not presently working in Rajasthan or that her husband has not at all executed any power of attorney in favour of his father.

11. Considering the above, the learned Judge of the Family Court has rightly allowed the application and thereby permitted the respondent's father to act as power agent to conduct proceedings and to appear on behalf of the respondent subject to the condition that the respondent must appear before the Court as and when required by the Court for his personal appearance. As already pointed out, the respondent in his application has specifically stated that he is ready to appear through Video Conferencing and also to appear before the Court as and when the Court directed him so.



Crl.R.C.(MD)No.768 of 2024

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Hence, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

12. In the result, this Criminal Revision Petition is dismissed.

Consequently, connected Miscellaneous Petition is closed.

06.11.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Family Court,
Madurai.



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Crl.R.C.(MD)No.768 of 2024

K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in
Crl.R.C.(MD)No.768 of 2024
and
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Dated : 06.11.2024