



Crl.R.C.No.426 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM

THE HONOURABLE DR. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.426 of 2020

1. G.Dillibabu
2. G.Bhavani
3. G.Gangadharan

... Petitioners

Vs.

Indrani

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the judgment rendered in Crl.A.No.502 of 2018 dated 20.11.2019 and Crl.M.P.No.14617 of 2019 on the file of the learned Principal District and Sessions Judge at Chennai, confirming the judgment passed in D.V.C.No.46 of 2017 (Old No. M.C.10 of 2014) dated 20.04.2018 on the file of the learned XVI Metropolitan Magistrate, George Town, Chennai and set aside the same allowing the Criminal Revision.

For Petitioners : Mr.L.Ravichandran

For Respondent : No appearance



Crl.R.C.No.426 of 2020

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ORDER

This Criminal Revision is filed by the husband, mother-in-law and father-in-law of the complainant viz., Indrani, who has initiated the proceedings under the Domestic Violence Act (herein after referred to as “the D.V. Act”, alleging that her marriage with one Dillibabu was solemnized on 26.08.2013 at Valluvar Vasuki Thirumana Mandapam, Avadi. At the time of marriage, the respondent's family gave one Royal Enfield Bullet Motor Cycle and gold jewels of 21 sovereign, besides all the household articles. The marriage expenses was met out by her bother.

2. But the marital relationship sustained hardly few days and they have separated permanently and she had driven out from the matrimonial home and got separated on 29.12.2013. This lead to lodging of complaint before the All Women Police Station, Avadi on 22.03.2014. In the presence of Police, the household articles and the seethana properties given to her husband including the two wheeler were returned except 21 sovereign of gold ornaments. Hence for return of jewels weighing 21 sovereign and for compensation of Rs.1,80,000/- for the



Crl.R.C.No.426 of 2020

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loss of earnings besides a lakh of rupees for other seethana articles, petition under Section 10(e) of the D.V. Act was preferred.

3. The petition was contested by the revision petitioners herein that after the marriage there was cordial relationship only for one month and thereafter the complainant had suspicious about the conduct of the first petitioner viz., her husband and started picking quarrel and deserted him. In this regard, when the complaint was given before the All Women Police Station, Avadi, she took back all the seethana articles and gave letter that she will work out her remedy before the Court of law. Therefore, the complaint under the D.V. Act is not maintainable.

4. Before the trial Court, the parties let in evidence. The list of articles given at the time of marriage and other documents pertaining to the marriage expenses, in the light of the complaint made before the Protection Officer, were considered. Thereafter, the learned XVI Metropolitan Magistrate, George Town, Chennai, disposed the petition by passing the following order :-



Crl.R.C.No.426 of 2020

“21. In the light of the discussion made above and on the strength of the decisions arrived at the points raised, this Court orders as follows:-

(1) The first respondent, his men, agents, representatives and relatives are hereby restrained by way of protection order from causing any kind of Domestic Violence to the petitioner.

(2) The respondents are directed to return the 21 sovereigns of jewels as described in the schedule below or pay the value of the jewels to the petitioner within 2 months from the date of order.

(3) The first respondent is directed to pay Rs.2,00,000/- as compensation to the petitioner under Section 22 of the D.V. Act directly or through her bank account within 2 months from the date of order.”

5. On an appeal before the learned Principal Session Judge, Chennai, in Crl.A.No.502 of 2018, the evidence was re-appreciated and found no error in the order passed by the trial Court in D.V.C.No.46 of 2017. Hence, the appeal was dismissed along with the Miscellaneous Petition filed under Section 391 of Cr.P.C., to adduce further evidence to



Crl.R.C.No.426 of 2020

establish that Ex.P.3, the letter is a fabricated document and the jewel weighing 21 sovereigns was taken back by the complainant, while she deserted the first petitioner. The appellate Court on considering the evidence has found that no merits in the appeal, since the Protection Officer's report and the statement made by the witnesses to the Police would go to show that there was dispute over return of jewels and in the proof affidavit filed by the first petitioner, the articles returned to the complainant are listed and acknowledged in a document dated 03.04.2014, which annexed along with Ex.P.3.

6. The learned counsel appearing for the petitioner would submit that the Courts below failed to consider that the document relied upon by the complainant are all photo copies and originals not been compared to accept its genuine, particularly the list of Seethana properties allegedly to have prepared on the date of marriage. In fact it does not contain the list of jewels weighing 21 sovereigns and the same was inserted and produced before the Courts below. But the Courts below relying upon it, since it is form part of the proof affidavit. Without



Crl.R.C.No.426 of 2020

marking the document, the Courts below ought not to have appreciated the content of it.

7. Further submits that while the first petitioner is ready to take the complainant into the marital home, she is not willing to join him. The first petitioner preferred petition for Restitution of Conjugal Rights. Though it was dismissed, the complainant on her part neither joined him nor sought for any divorce, which proves that she is on her own wish without any intention to join him. Therefore, the compensation of Rs.2,00,000/- awarded by the trial Court is not justifiable. Further the learned counsel for the petitioners would state that the marriage photos relied upon by the Courts below to hold that 21 sovereigns of jewels were given at the time of marriage is without any proof or prudence.

8. Pending the revision, the second petitioner viz., mother-in-law died. The learned counsel for the petitioners also filed a memo dated 10.02.2021 before this Court to that effect and the same is recorded. Though notice was served on the respondent and learned counsel entered



Crl.R.C.No.426 of 2020

appearance on behalf of her, there is no representation on the respondent/complainant. Heard the learned counsel appearing for the petitioners. The original records were called for and the same were perused.

9. It is true that the document viz., list of articles allegedly to have prepared on the date of marriage not been marked as an exhibit. However, it is found on the records. Regarding 21 sovereigns of jewels, there is no indication that the jewels were given at the time of marriage. The defence taken by the husband is that those jewels were taken away by the complainant when she deserted the first petitioner.

10. In this connection, the learned counsel appearing for the petitioners relied upon the letter given by the complainant before the All Women Police Station, Avadi, indicating that she has taken back all the articles which were given during the time of marriage and she is not interested in pursuing the complaint against his husband and in-law and she is ready to work out her remedy before the Court of law. On reading



Crl.R.C.No.426 of 2020

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of the said letter reveals that it is not an unconditional withdrawal of complaint but only with guider that she decided to work out her remedy through legal form and not through Police.

11. As far as 21 sovereigns of jewels, which is the point for consideration, the complainant had produced documents that at the time of marriage she was given 21 sovereigns of jewels, besides Royal Enfield Bullet. Pending complaint, the Royal Enfield Bullet appears to have been returned. Accepting the evidence of complainant and the photographs taken during the marriage, the Courts below had held that 21 sovereigns of jewels still retained by the petitioners and it should be returned back.

12. On perusing the acknowledge letter dated 03.04.2014, which form part of Ex.P.3, this Court finds that the complainant taken back a gold chain weighing 5 sovereigns and one set of bangle and one set of anklet. Now it is the case that 21 sovereigns of jewels which is found in the list prepared on 26.08.2013 not yet returned. This Court finds that the dollar chain weighing 5 sovereigns, ear ring 2 grams and silver anklet are



Crl.R.C.No.426 of 2020

all find place as gold ornaments given during the time of marriage, apart from necklace, bangles, and chain with doller. Before the All Women Police Station in the course of enquiry on 03.04.2014, chain, ring, anklet and ear ring alone were returned and not other jewels which comes to around 21 sovereigns.

13. The learned counsel appearing for the revision petitioners would submit that entire details found below the Royal Enfield bullet viz., one two wheeler are inserted and fabricated details. However, on perusing the list, this Court finds that Subramani, Palani, Kasthuri and Kavitha all signed below the list of jewels. Other document now produced before this Court to compare it, finds covered in the same place with white paper above the signature of the said persons, so the details of the jewels not found. Whether the documents now relied by the counsel for petitioners are genuine or the documents which are already been in the records on the file of the Court are genuine is not known. Both being the photo copies and not marked as document before the trial Court, this Court go by the observation made by the trial Court that the photograph



Crl.R.C.No.426 of 2020

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evidence as well as the complainant evidence indicates that to prove that the jewels are not returned to the complainant and retained by the accused.

14. Hence, this Court while confirming the order of the trial Court to the extent of returning the 21 sovereigns of jewels, modifying the payment of Rs.2,00,000/- as compensation to the complainant, since there is elements of contribution in the desertion and the parties have to work out their remedy before the Family Court for appropriate remedy and it is not the case for compensation to be awarded under the D.V. Act.

15. Accordingly, the Criminal Revision Petition stands partly allowed.

20.04.2023

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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Crl.R.C.No.426 of 2020

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To

1. The Principal District and
Sessions Judge,
Chennai.
2. The XVI Metropolitan Magistrate,
George Town,
Chennai.



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Crl.R.C.No.426 of 2020

Dr.G.JAYACHANDRAN, J

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Crl.R.C.No.426 of 2020

20.04.2023