



Crl.R.C.(MD).No.411 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	24.11.2023
Pronounced On	:	27.02.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD). No.411 of 2019

K.Mandiramadathi

... Petitioner/Respondent/Petitioner

Vs.

K.Murugaraj

... Respondent/Appellant/Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for records and set aside the order passed by the Honourable Additional District Judge, Srivilliputtur in C.A.No.26 of 2015 dated 25.01.2019 allowing the appeal and reversing the order passed by the Judicial Magistrate, Sivakasi, in M.C.No.35 of 2013, dated 06.01.2019.

For Petitioner : M/s.Lakshmi Gopinathan
for M/s.Polax Legal Solutions

For Respondent : Dr.D.Gnanasekaran

ORDER

The revision petitioner filed this revision to set aside the order passed by the Additional District Judge, Srivilliputtur in C.A.No.26 of 2015 dated



Crl.R.C.(MD).No.411 of 2019

25.01.2019 and to confirm the order passed by the Judicial Magistrate, Sivakasi, in M.C.No.35 of 2013, dated 06.01.2019.

2.The petitioner married the respondent on 06.09.2009. Thereafter, he had relationship outside the marriage with his co-worker, due to which, there was some dispute between them and hence, he is said to have caused Domestic Violence. In view of the above circumstances, she left the matrimonial home and filed divorce petition in H.M.O.P.NO.1 of 2011, before the Sub Court, Sivakasi, on the ground of adultery and cruelty. The respondent did not appear and she got exparte divorce and the same reached finality. The said divorce decree was granted on 04.12.2013. Thereafter, the petitioner filed the petition under the Domestic Violence Act claiming the following reliefs:

1-ம் எதிர்மனுதாரிடமிருந்து மனுதாரருக்கு
சொந்தமான 12 பவுன் தங்க நகை, ரொக்கப்பணம்
ரூ.1,25,000-ம் மற்றும் பண்ட பத்திரங்களை திருப்பிக்
கொடுக்கவும் மனுதாரருக்கு ஏற்பட்ட மன
உளைச்சலுக்காக ரூ.5லட்சம் நஷ்டயீடு வழங்கவும்,
மனுதாரருக்கு மாதம் ரூ.10,000/-ம் ஜீவனாம்சம் வழங்கவும்,
மேலும் மனுதாரருக்கு இடைக்கால நிவாரணத்
தொகையாக ரூ.1,10,000-ம் செலுத்தவும் 1ம்
எதிர்மனுதாரருக்கு உத்தரவிட வேண்டும்.



Crl.R.C.(MD).No.411 of 2019

WEB COPY

3.The learned Judicial Magistrate upon considering the evidence and also the documents granted the following relief:

1ம் எதிர்மனுதாரர் மனுதாரருக்கு
ரூ.4லட்சம் இழப்பீடு தொகையாக பிரிவு 22 குடும்ப
வன்முறை தடுப்புச் சட்டத்தின் கீழ் இரண்டு
மாதங்களுக்குள் வழங்க வேண்டுமென்ற பரிகாரம் மட்டுமே
மனுதாரருக்கு கிடைக்கத்தக்கது என்றும், இதர
பரிகாரங்கள் மனுதாரருக்கு கிடைக்கத்தக்கது அல்ல
என்றும் உத்தரவிடப்பட்டு இவ்வழக்கு பகுதியாக
அனுமதிக்கப்படுகிறது.

4.He held that the respondent had relationship out side the marriage and hence, he committed domestic violence and hence the petitioner is entitled to Rs. 4,00,000/- as compensation under Section 22 of the Domestic Violence Act and dismissed the petition relating to the other reliefs claimed against the respondent. Challenging the same, the respondent filed an appeal before the appellate Court in C.A.No.26 of 2015, on the file of the Additional District Court, Srivilliputhr. The learned Appellate Judge by impugned order, allowed the appeal and set aside the compensation amount of Rs.4,00,000/- granted in favour of the petitioner under Section 22 of the Domestic Violence Act, on the ground that she filed the domestic violence petition after lapse of considerable time from the date of divorce. Challenging the same, the petitioner filed this petition.



Crl.R.C.(MD).No.411 of 2019

WEB COPY

5.The learned counsel appearing on behalf of the petitioner/wife submitted that the Domestic Violence petition is maintainable as per the judgment of the Hon'ble Supreme Court reported in **2014-10-SCC-736**. The respondent committed the domestic violence namely he had extra marital relationship with another person and hence, he is obliged to give compensation.

6.Per contra, the learned counsel for the respondent/husband would submit that the relationship out side the marriage is not the domestic violence and hence, the order of the appellate judge is in conformity with the judicial pronouncements. He would further submit that the report of the protection officer was not filed, hence, grant of relief of compensation is not legally maintainable. As per the Judgment of the Hon'ble Full Bench of the Supreme Court reported in **2020 6 CTC 833**, this revision is not maintainable. As per Section 22 of the Domestic Violence Act, there must be domestic violence and injury. There is no fulfilment of the ingredients of Section 22 of the Domestic Violence Act. Hence, the order of the appellate Court is in accordance with law and hence, he seeks for dismissal of the case. It is submitted that the extra marital affair does not come under the Domestic Violence Act.



Crl.R.C.(MD).No.411 of 2019

WEB COPY

7. On the other hand the counsel for the petitioner/wife would submit that the Act clearly states that if the husband had relationship outside the marriage, it is also a domestic violence. The submission of the learned counsel for the revision petitioner is that the finding of the learned appellate judge that the petitioner filed a domestic violence petition after getting divorce is not in accordance with the judgment of the Hon'ble Supreme Court reported in **2014 10 SCC 736** and the same is against the law laid down by the Hon'ble Supreme Court.

8. In view of the finding of the learned appellate Judge, the petitioner has right to file the domestic violence petition, even after the divorce for the alleged domestic violence happened during the matrimonial period. Further, in this case, the specific allegation of the petitioner is that he had relationship outside the marriage and she filed the petition only on the ground of cruelty and adultery. The same was not denied by the respondent and exparte decree was granted. Hence, the learned trial Judge correctly appreciated the fact that the same amounts to domestic violence. Therefore, the grant of compensation of Rs. 4,00,000/- under Section 22 of the Domestic Violence Act is legal one. The said finding of the learned trial Judge was erroneously reversed by the learned



Crl.R.C.(MD).No.411 of 2019

appellate Judge, on the ground that she got divorced and hence, the petition is not maintainable.

9. Section 3 of the Domestic Violence Act, clearly states that the domestic violence includes injuries or harm, whether physically or mentally to the aggrieved person. The submission of the petitioner is that the act of the respondent having relationship outside the marriage amounts to causing harm both physically and mentally to the petitioner. Therefore, this Court declines to accept the argument of the respondent that the extra marital affairs does not come under the Domestic Violence Act.

10. The learned counsel for the husband submitted that the learned Judicial Magistrate has no jurisdiction to pass order under Section 22 of the Domestic Violence Act, without getting report from the protection officer. In this case, the Hon'ble Supreme Court in the judgement reported in **2022 8 SCC 90** held that the report of the protection officer is not necessary and on that ground the petition cannot be dismissed.

75.1. “(i) Whether the consideration of Domestic Incidence Report is mandatory before initiating the proceedings under the Domestic Violence Act, 2005 in



WEB COPY



Crl.R.C.(MD).No.411 of 2019

order to invoke substantive provisions of Sections 18 to 20 and 22 of the said Act?”

It is held that Section 12 does not make it mandatory for a Magistrate to consider a domestic incident report filed by a Protection Officer or service provider before passing any order under the DV Act. It is clarified that even in the absence of a domestic incident report, a Magistrate is empowered to pass both ex parte or interim as well as a final order under the provisions of the DV Act.

11. The supplementary submission made by the petitioner that the revision case is not maintainable as per the Hon'ble Full Bench of this Court reported in **(2020 6 CTC 833)** cannot be accepted. Before the Hon'ble Full Bench, the issue was whether the husband and other respondent in the domestic violence petition are entitled to file quash petition under Section 482 of Cr.P.C. Here, the petitioner filed this criminal revision challenging the order passed under Section 26 of the Domestic Violence Act, 2005. The revision is maintainable after the criminal appeal filed under Section 26 of the Domestic Violence Act, 2005. The Hon'ble Full Bench of this Court has held that the proceedings under Act is civil in nature up to the determination of the relief. Hence, the act itself provides appeal provisions. Therefore, the revision is maintainable against the order passed in appeal filed under Section 26 of the Domestic Violence Act, 2005.



Crl.R.C.(MD).No.411 of 2019

Therefore, this Court finds no merit in the contention of the respondent that the revision is not maintainable.

12.In the result, this Criminal Revision Case stands allowed. The judgment of the learned appellate judge is restored. This Court directs the respondent to pay the compensation within a period of one month from the date of receipt of a copy of this order, otherwise the petitioner shall file necessary petition in accordance with law.

27.02.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
sbn



WEB COPY



Crl.R.C.(MD).No.411 of 2019

To

1. The Learned Additional District Judge,
Srivilliputtur.
2. The Judicial Magistrate,
Sivakasi.
3. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.R.C.(MD).No.411 of 2019

K.K.RAMAKRISHNAN, J.

sbn

Pre-delivery Order made in
Crl.RC(MD). No.411 of 2019

27.02.2024