

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.1196 of 2014

Krishnaswamy

...Petitioner/Accused

Vs

1. Vijayalakshmi
2. Gayathri

...Respondents/Complainant

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code, to call for records in C.M.P.No.1021 of 2014 in C.A.No.Unnumbered Appeal of 2014, in C.M.P.No.1115 of 2014 in D.V.A.No.13 of 2012, dated 10.10.2014, on the file of the learned Principal District and Sessions Judge, Namakkal.

For Petitioner : Mr.M.R.Radhakrishnan

O R D E R

Being aggrieved by the order in Crl.M.P.No.1021 of 2014, in an unnumbered appeal in C.A.No. of 2014, in C.M.P.No.1115 of 2014 in D.V.A.No.13 of 2012, dated 10.10.2014, on the file of the learned Principal District and Sessions Judge, Namakkal, imposing a pre-condition to pay a sum of Rs.25,000/- to the respondents/petitioners, on or before 16.10.2014, for condoning the delay of 78 days, in filing the appeal, the present revision case is filed.

2. Material on record discloses that respondents/wife and daughter have filed D.V.A.No.13 of 2012, on the file of the learned Judicial Magistrate No.1, Namakkal, claiming maintenance of Rs.20,000/- each. For the educational expenses, hostel and other incidental expenses, a sum of Rs.1,25,000/- per annum, has been claimed for the 2nd respondent-daughter. Pending disposal of D.V.A.No.13 of 2012, C.M.P.No.1115 of 2014, has been filed.

3. According to the respondents/wife and daughter, the petitioner-husband is a retired teacher of High School and at the time of filing of D.V.A.No.13 of 2012, he was drawing a salary of Rs.20,000/- per month. According to the wife, she had obtained a loan for the education of her daughter, for joining B.Tech Engineering course. She had paid interest for the first and second years. Her daughter needs a Laptop. She is unable to pay even the electricity bill, water charges and to meet out the basic amenities. Therefore, C.M.P.No.1115 of 2014, has been filed under Section 20 of the Protection of Women from Domestic Violence Act, claiming interim maintenance of Rs.5,000/- each and term fees of Rs.1,00,000/- for the second and third year education of her daughter and Rs.30,000/- for the purchase of laptop.

4. The petitioner has objected to the prayer, contending inter alia that there was no act of domestic violence. However, he has admitted that he was drawing a sum of Rs.17,000/- as pension. He has also contended that a sum of Rs.2,000/- is being paid to the respondent-wife. Though he has contended that the respondent-wife was earning Rs.10,000/- per month, and illegally occupying and residing in three houses, bearing Door Nos.5/355 and B/355-1, Kadhiboard Colony, Salem Road, Namakkal, there was no proof.

5. Considering the above contentions, by order, dated 14.03.2014 in C.M.P.No.1115 of 2014 in D.V.A.No.13 of 2012, the learned Judicial Magistrate No.1, Namakkal, by observing that a sum of Rs.2,500/- each, per month, would be reasonable and sufficient and accordingly, ordered a sum of Rs.2,500/- each, per month, to be paid by the petitioner, as an interim monetary relief, to the respondents-wife and daughter, from 1st April, 2014. The Court has further ordered maintenance should be remitted, on or before 10th of every English Calendar month, in the 1st respondent's bank account.

6. Being aggrieved by the same, the petitioner has filed an appeal before the District and Sessions Judge, Namakkal, with a delay of 78 days. On 10.10.2014, C.M.P.No.1021 of 2014 in unnumbered C.A.No. of 2014, filed for condonation of 78 days, has been allowed, on direction to pay the arrears of interim maintenance of Rs.25,000/- to the respondents, on or before 16.10.2014. For reporting compliance, the learned Principal District and Sessions Judge, Namakkal, has posted the matter on 16.10.2014. On that date, on request, time has been extended to 17.10.2014. When the matter came up on 17.10.2014, as the condition imposed, has not been complied with, C.M.P.No.1021 of 2014 in C.A.No. of 2014, has been dismissed.

7. Though Mr.C.D.Johnson, learned counsel for the petitioner-husband assailed the correctness of the order made in CrI.M.P.No.1021 of 2014, in an unnumbered appeal in unnumbered C.A.No. of 2014, on the grounds, inter alia that the learned District and Sessions Judge, has failed to consider that the trial Court had not followed the procedure contemplated under Rules 5 and 6 of the Protection of Women from Domestic Violence Rules and failed to consider the merits of the case and passed an erroneous order, this Court is not inclined to accept the said submissions, for the reason that from the perusal of the order of the learned Judicial Magistrate No.1, Namakkal, it could be deduced that the Court below, after considering the rival submissions, has observed that the respondent-wife has made out a prima facie case that the petitioner/husband is having sufficient means to maintain the wife and daughter, and for the two years, with a meagre amount of Rs.2,000/- per month, they were suffering.

8. As rightly observed by the lower Court that the cost of expenditure towards education, is very high. Admittedly, the 2nd respondent is a B.Tech Engineering student. To keep pace with others, in the matter of learning, one may require a computer or laptop. It is not a luxury. Judicial notice can also be taken that some of the colleges, even supply their study materials, through on-line, in their official websites, for which event, the student is required to have a Computer or Laptop. Such being the mode of teaching in the present day educational system, a reasonable sum may be required for purchasing the same.

9. Though the petitioner has contended that a sum of Rs.2,000/- has been paid regularly, it is nothing but a pittance. If the contribution of the petitioner-husband is calculated per day, it is just less than Rs.70/- per day, to both the respondents. Thus, taking into consideration the standard of living, education and other expenses, the learned Judicial No.1, Namakkal, has ordered a sum of Rs.2,500/- as interim relief, from 1st April, 2014, to be remitted on the account of the 1st respondent, on or before 10th of every English Calender month.

10. When the appeal is filed with a delay of 78 days, the learned Principal District and Sessions Judge, Namakkal, by order, dated 10.10.2014, has imposed a pre-condition of Rs.25,000/- to be paid to the respondents, on or before 16.10.2014. As directed, the matter has been called on 16.10.2014 and since the petitioner has not paid the same, the petition filed for condonation has been dismissed. Maintenance ordered by the lower Court is too low. What has been considered is only an interim monetary relief.

11. There is no merit in this revision and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst. Registrar (J)

/true copy/

Sub Asst. Registrar.

skm

To

1. The Principal District and Sessions Judge,
Namakkal.
2. The Judicial Magistrate No.I,
Namakkal.
3. -d0- Through The Chief Judicial Magistrate,
Namakkal.

1CC toi Mr.C.D.Johnson, SR 10962

Cr1.R.C.No.1196 of 2014

UG [CO]
PSI 22.04.2015

सत्यमेव जयते

WEB COPY