

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

CrL.R.C.No.1254 of 2014

A.K.Anbalazgagan

... Petitioner/Appellant/Accused

vs.

P.Kalaimagal

... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code to set aside the Judgment in C.A.No.18 of 2013 dated 18.02.2014 on the file of the learned XVII Additional Judge, City Civil Court, Chennai, confirming the order of the learned XIII Metropolitan Magistrate, Egmore, Chennai, in CrL.MP.No.3699 of 2012 in CrL.MP.No.115 of 2011 dated 16.10.2012.

For Petitioner : Mr.S.Kingston Jerold

For Respondent : Mr.M.Mohamed Hasain

JUDGMENT

Material on record discloses that alleging domestic violence, respondent/wife has filed an application under Section 12 read with Sections 18, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005, before the learned XIII Metropolitan Magistrate, Egmore, Chennai, which is taken on file in CrL.MP.No.115 of 2011. Counter affidavit has been filed by the petitioner/ respondent. Pending disposal of CrL.MP.No.115 of 2011, wife has filed CrL.MP.No.3699 of 2012 for interim relief.

2.Material on record discloses that in the main petition, wife has contended that after marriage, she was not allowed to speak with her parents and neighbours of the matrimonial home. She was kept inside a locked room and that husband would leave for the job. Wife has alleged that she was subjected to verbal and physical harassment, by the respondent. Wife has further alleged that on many occasions, husband, in a drunken state, had beaten her. She was not provided with proper food, cloth and her movements were restricted by her husband and in-laws. Wife has alleged that children were not fed properly and their educational interest, was not taken care of, by the husband. She has also alleged that her husband has forcibly

taken away the jewels, and pledged the same, to satisfy his thirst for liquor.

3. Endangering threat to life to herself and children, and to provide proper education to her children, she has joined a Women Self Help Group, for living. For the abovesaid reasons, she was forced to leave the matrimonial home and it is her contention that from the date of filing of application in CrI.MP.No.115 of 2011, she was living with her father. For the abovesaid reasons, she has sought for interim maintenance.

4. The respondent/husband, while objecting to the relief of interim maintenance, has admitted the marriage between the parties and also the birth of two male children. He has denied the allegation of domestic violence. On the other hand, he has contended that it is the wife, who is in the habit of picking up quarrels with neighbours, as well as himself, without any reasons. Thus, husband, while denying the allegation of domestic violence, submitted that it is the wife, who was caused, for the problems. He further submitted that without his consent, wife has joined a Self Help Group and used to come home, late in the night. He was unable to prevent the same.

5. On the averments that wife is unable to maintain herself, husband has contended that she is a member of some self help woman organization, and she has regular income, children are aged 19 and 21 years, respectively and therefore, they are not entitled to claim maintenance under the provisions of the Protection of Women from Domestic Violence Act, 2005. According to him, the main petition filed under Sections 12 read with 18, 20 and 22 of Protection of Women from Domestic Violence Act, 2005, is not maintainable. Moreover, it is contended that the interim application filed, after a lapse of four years, deserves to be dismissed.

6. After adverting to the rival contentions and considering the evidence on record, vide order dated 16.10.2012 in CrI.MP.No.3699 of 2012 the learned XIII Metropolitan Magistrate, Egmore, Chennai, has ordered a sum of Rs.5,000/- to be paid, as interim maintenance, on or before 3rd day of every English Calendar month. While doing so, the learned XIII Metropolitan Magistrate, Egmore, Chennai, has noticed that at the time of filing of the application, wife and two children, were residing in her father's house. The Court below, after analyzing the evidence, has also taken note of the contentions of the wife that in the year 2008, she was constrained to return to her father's house and thereafter, on 13.06.2009, when the wife and children wanted to go to her father's house, she was prevented by the husband, their clothes were thrown out, in the street and that she was threatened by the husband. Thus, taking note of the reasons, for the wife and children living separately, from the year 2008, and subsequently, prevented from entering to the matrimonial home, in which parties lived together, prior to the disputes, the Court below

has arrived at a conclusion that in the abovesaid circumstances, wife and children could not enter into the matrimonial home. Though the husband, has contended that it is the wife, who went out the matrimonial home, without any just and reasonable cause, finding of the Court below, is otherwise.

7. Insofar as the quantum of maintenance is concerned, husband is stated to be an Office Assistant, working in Transport Department, Chennai. Though the wife has claimed that his taken home income was Rs.18,000/- per month, no document has been filed. In spite of the same, the learned XIII Metropolitan Magistrate, Egmore, Chennai, has fixed his monthly income as Rs.18,000/- and directed him to pay Rs.5,000/- per month, to the petitioner as an interim relief, pending disposal of the main petition.

8. The order of the learned XIII Metropolitan Magistrate, Chennai, impugned in CrI.A.No.18 of 2013 has been sustained by order dated 18.02.2014 by the learned XVII Additional Judge, City Civil Court, Chennai.

9. Perusal of the appellate order shows that besides reiterating the reasons, for the disentitlement to claim maintenance, on the grounds of refusal to live together and her own earning, the petitioner/husband has also contended that the trial Court has mechanically fixed the income of the petitioner as Rs.18,000/- per month, with the sole reason that he is working in Transport Department, Government of Tamilnadu. It is also his contention that the trial Court has failed to consider that the actual income of the petitioner, is only Rs.7,000/- per month, and therefore, it would be very difficult to pay a sum of Rs.5,000/- to the wife, as interim maintenance. He has also contended that the elder son has completed his engineering course, and earning.

10. Adverting to the above, vide order dated 18.02.2014 in CrI.A.No.18 of 2013, the learned XVII Additional Judge, City Civil Court, Chennai, by observing that the father is liable to meet out the educational expenses, has rejected the said contentions. While rejecting the contentions, on the aspect of the husband, drawing lesser salary, the appellate Court, has observed that if the monthly income of the husband was not Rs.18,000/- per month, he could have proved his salary, by producing the salary Certificate, as determined by the Lower Court, before the Court below. In the absence of salary Certificate, the learned appellate Court Judge, has concurred with the finding regarding income. Holding that there were materials of domestic violence and considering the status of the petitioner, a Government servant, the learned XVII Additional Judge, City Civil Court, Chennai, held that a sum of Rs.5,000/- awarded as interim maintenance, under Section 23(1) of the Protection of Women from Domestic Violence Act, cannot be said to be unreasonable, warranting any interference.

11. Though Mr. S. Kingston Jerold, learned counsel for the petitioner reiterated the same submissions raised before the Lower Courts, going through the impugned Judgment, this Court is of the view that no perversity can be attributed to the finding of the Lower Courts, in recording a prima facie view of the acceptable domestic violence committed by the husband/petitioner. Merely because an interim application has been filed after four years, from the date of filing of the main CrI MP.No.115 of 2011 on the file of the learned XIII Metropolitan Magistrate, Egmore, Chennai, entitlement of the wife/aggrieved person, to seek for interim relief, at any stage of the proceedings, arising under Section 12 of the Protection of Women From Domestic Violence Act, 2005, cannot be ignored.

12. Entitlement of the wife to seek for appropriate orders under Sections 18, 19, 20, 21 and 22 of the Protection of Women from Domestic Violence Act, has been exclusively considered by this Court in Criminal Revision Case Nos.1418 and 1494 of 2012, dated 17.02.2015.

13. Therefore, the contention of the husband that CrI MP.No.3699 of 2012 has been filed after four years from the date of filing of the main petition under Section 12 of the Act and wife is not entitled to maintenance, cannot be countenanced. Aspect of domestic violence has been prima facie substantiated by the wife and children. The only aspect which remains to be considered is whether the respondent has any regular earning, as a member of the Self help woman organization and thus, she has means to maintain herself. It is also to be considered as to whether the husband had insufficient means to pay the quantum of Rs.5,000/- as interim relief. Admittedly, he is working as an Office Assistant in the Transport Department, Secretariat, Chennai. Though a xerox copy of the salary Certificate dated 26.06.2009, has been produced before this Court, which is not marked in the Court below, perusal of the same, shows that even in the year 2009, the petitioner was paid Duty Pay of Rs.3,660/-, Dearness Pay of Rs.1913/-, Dearness Allowance of Rs.3672/-, and other allowances. In 2009, he seemed to have contributed a sum of Rs.1020/- for GPF subscription. Perusal of the Salary Certificate shows that he had a loan advance from GPF for which deduction has been made as GPF advance of Rs.1890/-. As on 26.06.2009, his salary was Rs.10240. Deduction includes his contribution and recovery from the salary, towards GPF Advance and other heads of account. Order in CrI M.P.No.115 of 2011 has been passed on 16.10.2012. Even taking it for granted that xerox copy of the salary Certificate produced before this Court, can be considered, as on 26.06.2009, the salary shown in the Certificate was Rs.10240/-. Order in CrI MP.No.3699 of 2012 has been passed on 16.10.2012, and therefore, taking note of the difference of salary from 26.06.2009 to 16.10.2012, it could be reasonably presumed that after three years, there could be some increments and consequently, upward revision in the duty pay and

other allowances. Merely because the petitioner has taken some loan for which there was a deduction, it cannot be a ground to contend that he has no means to pay a sum of Rs.5,000/- as interim relief to the wife. The petitioner has further contended that the wife, as a member of the Self help group, continues to earn and therefore, she has means to maintain herself. But, no document has been filed before the Court below. Therefore, as rightly held by both the Courts below, when the petitioner as an Office Assistant of the Transport Department, had not come forward to prove the actual income earned by him in 2012, when CrI MP No.3699 of 2012, was heard and considering the expenses, likely to be incurred for meeting the expenses for basic amenities, the lower Court has ordered Rs.5,000/- as interim maintenance. Finding the fact recorded by the Courts below cannot be said to be perverse. Entitlement of the respondent/wife to seek for maintenance, at any stage of the main petition filed under the said Act has already been sustained by this Court in Criminal Revision Case Nos.1418 and 1494 of 2012, dated 17.02.2015. Payment of Rs.5,000/- per month cannot be said to be grossly excessive, warranting interference.

14. When the matter came up for admission on 09.02.2015, this Court passed the following orders:

"On 19.01.2015, while ordering notice of motion, this Court granted Interim Stay of the impugned proceedings on condition that the petitioner should produce a Demand Draft of Rs.65,000/-, being 50% of the arrears of maintenance amount, as on 09.02.2015. The petitioner was also directed to cause notice on the respondent, within the stipulated time.

2. On this day, when the matter came up for hearing, Mr. S. Kingston Jerold, learned counsel for the petitioner submitted that notice sent to the respondent/wife, as per the address provided in CrI. MP. No. 115 of 2011 on the file of the learned XIII Metropolitan Magistrate, Egmore, Chennai, has been returned, with a postal endorsement "Left". In support of the above contention, junior counsel attached to his office, has filed an affidavit, dated 04.02.2015. Learned counsel for the petitioner further submitted that CrI. MP. No. 115 of 2011 is posted on 20.02.2015 for hearing and that the petitioner would tender a Demand Draft for Rs.65,000/- to the respondent in the Lower Court. Submission of the learned counsel is placed on record.

Interim stay shall continue till 26.02.2015. As submitted, the petitioner is permitted to tender the Demand Draft for the abovesaid sum, to the respondent, on 20.02.2015, and also copies of the Grounds of Revision in CrI. RC. No. 1254 of 2015 along with the entire typedset of papers. The petitioner shall file proof of payment of

the abovesaid sum and service of all materials stated supra.

Post on 26.02.2015."

Learned counsel for the petitioner submitted that the order dated 09.02.2015, has been complied with.

15.In the light of the above discussion, Criminal Revision Case is dismissed. Consequent to the dismissal of the present Criminal Revision Case, the petitioner is directed to deposit the balance amount and to pay the arrears of maintenance at the rate of Rs.5,000/- within one month, from the date of receipt of a copy of this order and further directed to pay maintenance at the rate of Rs.5,000/- on or before 5th day of every English calendar month, till the disposal of CrI MP.No.115 of 2011 on the file of the learned XIII Metropolitan Magistrate, Egmore, Chennai.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The XVII Additional Judge,
City Civil Court, Chennai.

2.The XIII Metropolitan Magistrate,
Egmore, Chennai.

3.The Chief Metropolitan Magistrate,
Egmore, Chennai.

Copy to:
The Section Officer,
Criminal Section, High Court,
Madras.

+1 cc to Mr.S.Kingston Jerold, Advocate, SR.14166

+1 cc to Mr.H.Mohamed Hasain, Advocate, SR.13564.

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