

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

CRL.R.C.No.569 of 2014

M.P.No.1 of 2015

and M.P.No.1 of 2014

1.Pradap Prakash Royapparaj

2.R.G.Prakash

3.Nambikkai Marry Petitioners/Accused 1 to 3

vs.

Arokia Augustina Mouttapa Respondent/Defacto Complainant

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order dated 26.02.2014 in MC No.3 of 2013 on the file of the learned Chief Judicial Magistrate, Pondicherry.

For Petitioners : Mr.K.Sukumaran

For Respondent : Mr.R.Natarajan

JUDGMENT

Order dated 26.02.2014 passed in MC.No.3 of 2013 under Section 12 of the Protection of Women from Domestic Violence Act, 2005, is challenged, in this revision case. On 13.06.2014, this Court has passed the following orders:

"Notice of motion returnable in six weeks. Private notice is also permitted.

2.Mr.K.Sukumaran, learned counsel appearing for the petitioner invited the attention of this Court to the findings rendered by the Court below in the impugned order, more particularly, in Paragraph No.4 of the order, wherein the Court relied upon Ex.P.5, First Information Report in Crime No.21 of 2012 on the file of the All Women Police Station, Puducherry, dated 22.11.2012. It is submitted

that the said First Information Report has been questioned by the petitioner by filing CrI.O.P.No.27783 of 2013 and this Court, by order dated 30.10.2013, has granted an order of interim stay for a limited period and the said Criminal Original Petition is pending. That apart, learned counsel submitted that the respondent/wife claimed Rs.6.00 Lakhs as compensation and the Court has not rendered any finding as to what is the mental torture and emotional distress caused by the petitioners and the Court has not assigned any reason to arrive at a compensation of Rs.3.00 lakhs.

3.In view of the above submission, there will be an order of interim stay."

2.Seeking to vacate the interim stay, M.P.No.1 of 2015 has been filed by the respondent/wife. One of the contentions raised in the counter affidavit filed by the wife is that the present revision case is not maintainable, as a remedy of appeal is provided under Section 29 of the Protection of Women from Domestic Violence Act, 2005.

3.However, Mr.K.Sukumaran, learned counsel for the petitioners submitted that without there being a finding of domestic violence, the learned Judicial Magistrate, Pondicherry, has directed the petitioner to pay maintenance, as well as compensation of Rs.3,00,000/- and hence, the Revision would lie under Sections 397 read with 401 of the Code of Criminal Procedure.

4.Challenge, as to the finding of fact can be always urged before the appellate authority. Merely because, no finding has been recorded, by the learned Chief Judicial Magistrate, Pondicherry, the petitioner cannot be allowed to circumvent the statutory provisions. Moreover, being the final authority to decide questions of facts, the appellate Court can always consider the evidence adduced and record a finding of fact, even, if it is not done by the lower Court. Revisional jurisdiction is restricted to adjudge such finding, with a limited scope, to ascertain as to whether there is any perversity in such finding. If according to the petitioner, no finding of fact of domestic violence is recorded by the learned Chief Judicial Magistrate, Pondicherry, the appellate Court can record any finding, on that aspect, if there was any appeal. On the issue as to whether a revision case is maintainable, against an order passed under Section 12 of the Protection of Women from Domestic Violence Act, 2005, this Court in K.Rajendran and another v. Ambikavathy and another, in CrI.R.C.(MD) No.482 of 2012 dated 08.01.2013, has held that a revision is not maintainable.

5.On the earlier occasion, in A.M.Imthiaz Nasar v. G.Munavar Sulthana in CrI.RC.No.SR.7116 of 2015, dated 26.02.2015, this Court has followed the decision in Rajendran's case. Therefore, I am bound

to follow the decision, in Rajendran's case (cited supra). Without going into the merits of this case, this Court is of the view that the present case is not maintainable. Interim stay granted is vacated, and I have to dismiss the revision case.

6.While dismissing the revision case on the ground of maintainability, Mr.K.Sukumaran, learned counsel for the petitioner sought leave of this Court to prefer an appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005. If the statute provides a remedy, it is always open to the petitioner to avail the same, and no leave is required to be given. If any appeal is filed before the competent authority, it is for the petitioner to explain as to whether, the appeal was intime, and whether the cause papers, satisfy the requirement.

The Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mps
To

1.The Chief Judicial Magistrate,
Pondicherry.

2 cc to Mr.R.Natarajan ,Advocate, SR.No.16853

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gj (co)
pmk.15.4.2015

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