

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.2.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

CrI.R.C.No.925 of 2014
and
M.P.No.1 of 2014

Balamurali ... Petitioner

vs.

K.Shanmuga Priya Respondent

Criminal revision case filed under Section 397 read with Section 401 of Cr.P.C. to set aside the order dated 18.7.2014 in C.M.P.No.2181 of 2013 in D.V.O.P.No.136 of 2013 on the file of the Judicial Magistrate, Additional Mahila Court, Salem.

For Petitioner : Mr.S.Kalyanaraman

For Respondent : No appearance

O R D E R

Material on record discloses that on the petition filed by the respondent/wife, in C.M.P.No.1516 of 2013 in D.V.O.P.No.136 of 2013, vide order dated 31.07.2013, the petitioner/husband has been directed to pay a sum of Rs.10,000/- as interim maintenance. As against the said order, the petitioner/husband has filed a criminal revision petition before the District and Sessions Judge, Salem, along with C.M.P.No.1086 of 2014 for condoning the delay of 198 days in filing the revision petition.

2. Mr.S.Kalyanaraman, the learned counsel for the revision petitioner submitted that so far no order has been passed in the condone delay petition.

3. While that be so, the respondent/wife has filed C.M.P.No.2181 of 2013 in D.V.O.P.No.136 of 2013, on the file of the learned Judicial Magistrate, Additional (Mahila) Court, Salem, under Section 31 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'Act' in short). The

petitioner/husband has opposed the said petition by raising a contention that subsequently the respondent had married one Senthil and therefore, she is not entitled to get any maintenance from him. However, going through the materials and by observing that the petitioner/husband has not produced any evidence to prove that the wife had remarried and also taking note of the denial of the above said averment by the wife, the learned Judicial Magistrate, Additional Mahila Court, Salem, vide order, dated 18.7.2014, has directed the Inspector of Police, Hasthampatty Police Station, to register a case against the petitioner/husband, under Section 31 of the the Protection of Women from Domestic Violence Act, 2005 and under Section 188 of the Indian Penal Code. While doing so, the Court below has also observed that knowing fully well of the order passed the Court, directing interim maintenance, the petitioner has intentionally disobeyed the said order, which amounts to breach of protection, as provided for under Rule 15(7) of the Act. Hence, the the Judicial Magistrate, Additional Mahila Court, Salem, has issued direction for registering a case, as stated supra.

4. Though Mr.Kalyanaraman, the learned counsel for the petitioner assailed the correctness of the order passed by the Judicial Magistrate, Additional Mahila Court, Salem, in C.M.P.No.2181 of 2013, dated 18.07.2014, by reiterating the above said grounds and sought for interference, this Court is not inclined to accept the said contentions.

5. Section 31 of the Protection of Women from Domestic Violence Act, 2005, reads as follows:

"Sec.31. Penalty for breach of protection order by respondent - (1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extent to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who has passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), Magistrate may also frame charges under Section 498-A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions."

Rule 15(7) of the Protection of Women from Domestic Violence Act, 2005, is extracted hereunder:

"Rule 15. Breach of Protection Orders -
: : : : :
.

(7) Any resistance to the enforcement of the orders of the Court under the Act by the respondent or any other person purportedly acting on his behalf shall be deemed to be a breach of protection order or an interim protection order covered under the Act."

6. Two reasons assigned by the petitioner/husband for non-compliance/breach of protection order are (1) that the condonation petition in C.M.P.No.1086 of 2014 in unnumbered C.R.P.No. nil of 2013 against the interim order granted on 31.07.2014, is still pending consideration by the learned District and Sessions Judge, Salem; and (2) that the wife/respondent had remarried one Senthil.

7. In so far as the first contention is concerned, as rightly observed by the learned Judicial Magistrate, Additional (Mahila) Court, Salem, there is no stay of the interim order made in C.M.P.No.1516 of 2013, dated 31.07.2013, directing the petitioner/husband to pay a sum of Rs.10,000/- as interim maintenance. Pendency of condonation petition does not amount to stay of the impugned order.

8. C.M.P.No.2181 of 2013, under Section 31 of the Protection of Women from Domestic Violence Act, 2005, has been taken on file on 20.09.2013. Thereafter only the delay excuse petition C.M.P.No.1086 of 2014 is stated to have been filed on 17.03.2014, before the District and Sessions Court, Salem. Thus, it is evident that the petitioner/husband has filed a revision petition to set aside the order dated 31.07.2013, only after the filing of the petition under Section 31 of the Act. Nothing prevented the petitioner to take effective steps for speedy disposal of the delay excuse petition. As observed earlier, there is no stay of the order made in C.M.P.No.1516 of 2013, dated 31.7.2013.

9. The second reason assigned by the petitioner for non-compliance/breach of the order is that the respondent had remarried the other person by name Senthil. No evidence was produced to substantiate the same. On the contrary, the respondent/wife appeared in Court and denied second marriage. As rightly observed by the Court below, the petitioner/husband is bound to obey the order, failure of which, would entail action under Section 31 of the Protection of Women from Domestic Violence Act, 2005.

10. Going through the materials on record, this Court is of the view that there is no manifest illegality in the impugned order, warranting interference by this Court. Hence, the criminal revision case is dismissed. Connected miscellaneous petition is dismissed.

msk

-s/d-

Assistant Registrar (CS-II)

Dt:18/02/2015

True Copy

Sub-Assistant Registrar

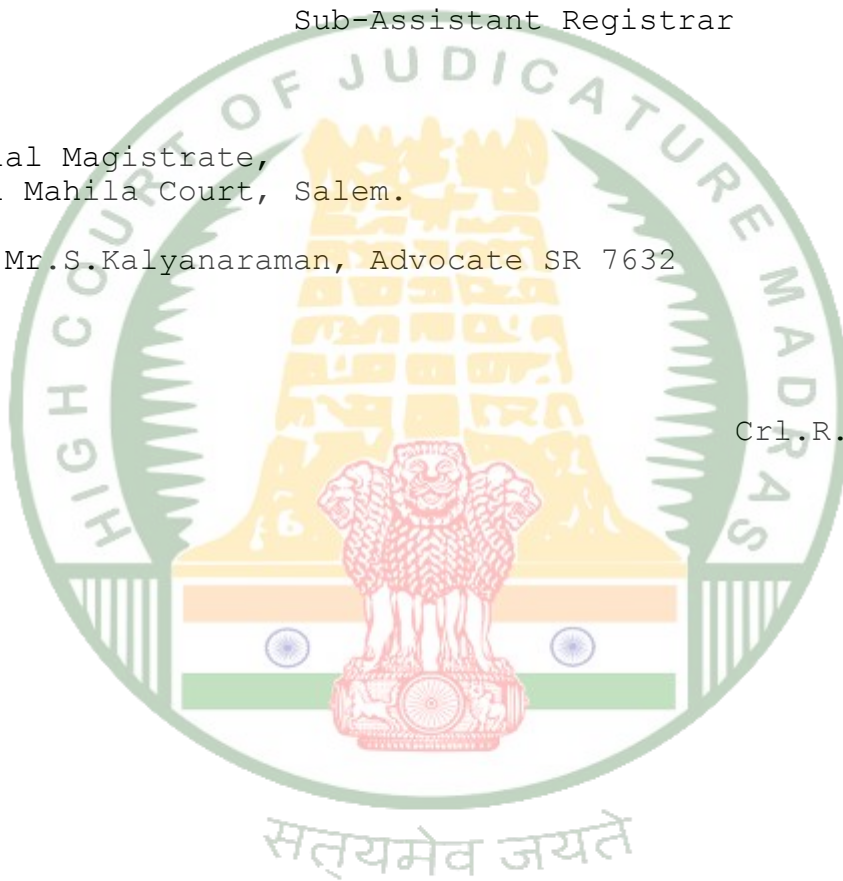
To

The Judicial Magistrate,
Additional Mahila Court, Salem.

+ 1 cc to Mr.S.Kalyanaraman, Advocate SR 7632

nm(co)
prk18/2

Crl.R.C.No.925 of 2014



WEB COPY