

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.114 of 2015
and M.P.No.1 of 2015

1. Girija
2. Manavalan

.. Petitioners

Vs

Bharagath Nachiyar

.. Respondent

Criminal Revision Case is filed under sections 397 r/w 401 of Criminal Procedure Code, to set aside the order passed by the learned Ist Additional Sessions Court at Chennai in Crl.A.No.118 of 2013, dated 26.09.2014, confirming the order passed by the learned XIV Metropolitan Magistrate, Egmore, Chennai, in M.P.No.253 of 2012, dated 11.06.2013.

For Petitioner : Mr.P.Vijendran

ORDER

Being aggrieved by the learned 14th Metropolitan Magistrate, Egmore, Chennai, in M.P.No.253 of 2012, dated 11.06.2013 and confirmed by the appellate authority in Crl.A.No.118 of 2013, dated

26.09.2014, on the file of the learned 1st Additional Sessions Court, Chennai, the present criminal revision is filed.

2. Material on record discloses that the respondent is residing with her widowed mother at Pattur, Chennai. She got married to one Tamilarasan, S/o.Manavalan, 2nd petitioner and Girija Manavalan, under the Special Marriage Act, on 06.09.2009. Tamilarasan worked as a Marine Engineer. According to her, the petitioners never liked her, from the date of marriage. She further submitted that 50 sovereigns of gold jewels for the respondent and 5 sovereigns of gold jewels for her husband, one and half ground of land in Arakkonam Thiruvallur Road, 1 ground of land at Sholinganailur, Banavaram and Half a ground at Thirumullaivoyil were given as Sridhana property to the respondent, by her parents. In spite of the same, the petitioners used to demand cash and jewels, from her and to bring them from her parental home. The respondent's parents have fulfilled their demands, in order to let their daughter live happily. The petitioners' daughter, Samundeeswari, used to scold the respondent, for not giving birth to a child. Another daughter, Vimala, used to call up the respondent's husband from Canada and compel him to get married with

someone else, as he has no child through his wife. Tamilarasan's brother, Karthikeyan used to call up Tamilarasan, and ask him to divorce the respondent and get married to a lady of their own religion. The petitioners used to abuse the respondent, by using vulgar language and ask her to get away from her husband.

3. On 24.9.2010, the respondent and her husband took a separate residence, near Mudaravoyal market, by getting loan from Axis Bank. The petitioners came there, stating that they should not be allowed to live in a new house, when the others are suffering in a old house and thus, both the petitioners started torturing the respondent. The respondent husband's uncle compromised them, and asked the respondent and her husband, to live in the third floor of a house, at Chetpet. On 29.11.2011, they shifted to Chetpet house, leaving all her household articles at Mudaravoyal itself. Even then, Tamilarasan's family members continuously gave troubles to the respondent and her husband, by calling them over phone. From 13.12.2011 to 17.12.2011, the petitioners, Karthikeyan, Vimala, Samundeeswari, Tamilarasan's brother and sisters, have caused mental agony to Tamilarasan, by calling him over phone and

that the respondent and her husband, attempted to commit suicide, as they were not allowed to live peacefully and Tamilarasan died. The respondent was admitted in a hospital. When the respondent returned to her matrimonial home, from the hospital, the petitioners, their daughters and son, sent her out of the house, by scolding her. The respondent's jewels, certificates and title deeds were taken away from her. She was forced to live with her widowed mother. Therefore, the respondent has filed M.P.No.253 of 2012, on the file of XIV Metropolitan Magistrate, Egmore, Chennai, for both protection and residence orders, under Sections 18 and 19 of the Protection of Women from Domestic Violence Act.

4. The petitioners have filed a counter affidavit and contended that the 2nd petitioner is a retired Telecom Technical Assistant and the 1st petitioner is a house wife. They have two sons and two daughters. The eldest son, Karthikeyan, works as a dialysis technician in Singapore, and he lives with his family in Singapore. Younger son, Tamilarasan, worked as Marine Engineer. In the year 2009, he told the petitioners that he had fallen in love with Barakath Nachiyar alias Janath, the respondent

herein, belonging to Muslim community and that he would like to marry her, according to Hindu Rites and customs and asked them not to demand dowry, as she is poor. All the marriage expenses of Tamlarasan was borne out by the petitioners. Tamlarasan used to work in the ship and used to come home, only during holidays. The respondent used to stay with the petitioners. The respondent used to chat for long hours in night through computer. Tamlarasan purchased a house at Mudaravoyal, out of his earnings for Rs.33/- Lakhs. On 25.01.2011, the petitioners and respondent, were brought to the house, at Maduravoyal, by Tamiiarasan. He went out for some time. When Tamlarasan returned home, the respondent fought with her husband for a separate living. Thereafter, the respondent left to her parental home on 29.11.2011. Since the respondent was adamant, to live separately with her husband, they lived separately in a house at Chetpet on 30.11.2011. Tamlarasan died under suspicious circumstances on 17.12.2011. The respondent gave a complaint in G.7 police station, stating that her husband had committed suicide and a criminal case was registered in Cr.No.1098/11. The case was referred as mistake of fact, without proper enquiry. While cleaning the house at Chetpet, a letter written by Tamlarasan, few minutes

before his death to the Police Commissioner, was found, which raised suspicion that Tamilarasan was murdered by the respondent and hence, the petitioners lodged a complaint before G.7 police station on 2.2.2012 to investigate properly, regarding their son's death. Since no action was taken by the police, a petition was filed before this Court, on 30.3.2012. As a counter blast, the respondent filed a complaint in Vepery All Women police station, against the petitioners. The police officials harassed the petitioners and therefore, Original Petition No.3051/12 was filed, before this Court, against the police, not to harass them and the same was disposed of on 2.3.2012, stating that no case was pending, against the petitioners. A petition was also filed by the petitioners for CBCID investigation into Tamilarasan's death in O.P.No.9279/12 and only then, they came to know that Cr.No.1098/2011 was already referred as mistake of fact and hence, a protest petition was filed by the petitioners. Thereafter, the respondent has filed a petition before the All Women police station, Kilpauk and her only intention was to grab the property of the petitioners and their son, and to take revenge on them. The respondent went to her parental home, on her own volition. For the abovesaid reasons, prayed for dismissal of the petition.

5. The learned XIV Metropolitan Magistrate, Egmore, hearing the arguments of both sides and after examining the respondent as PW.1 and witnesses examined on the side of petitioners, as R.W.1 to 5 and considering the documents marked by both parties, Ex.P.1 to P.5 and Exs.R1 to R.30, has passed an order, granting residence and protection orders and prohibiting alienation of the assets and ordered for return of Shreedhana and other properties title deeds to the respondent, u/s. 19, 18, 18(e) and 19(8) of Protection of Women from Domestic Violence Act.

6. Aggrieved by the same, the petitioners have preferred Criminal Appeal No.118 of 2013, before the learned 1st Additional Sessions Court, Chennai. While confirming the order of the learned 14th Metropolitan Magistrate, Egmore, Chennai, in M.P.No.253 of 2012, dated 11.06.2013, the appellate Court has dismissed Criminal Appeal No.118 of 2013, on 26.09.2014. Hence, the present Criminal Revision.

7. One of the grounds of challenge is that both the Courts below have failed to consider that the respondent had never faced any kind of

domestic violence, while she was in the matrimonial home and therefore, the orders, under Sections 18, 19 and 23 of the Protection of Women from the Domestic Violence Act, 2005, have been passed mechanically, without any findings on domestic violence. Contradictory statements made by the respondent in DIR, Complaint to the Protection Officer, dated 02.04.2012, Complaint to the Commissioner of Police, dated 09.01.2012 and the Chief Examination recorded by the learned Magistrate on 11.06.2012, have not been properly adverted to, by the Courts below.

8. The petitioners have further contended that the learned Magistrate has acted in a biased manner. There was no allegation of domestic violence from the date of marriage. When the petitioners lodged a complaint against the respondent, regarding the death of their son, as a counter blast, the respondent has lodged a complaint to the Protection Officer, under the Domestic Violence Act. According to them, both the Courts below have failed to apply their judicial and logical mind, in arriving at the conclusion of domestic violence.

Heard the learned counsel for the parties and perused the materials available on record.

9. The Protection of Women from Domestic Violence Act, 2005, (Act 43 of 2005), is enacted to provide for more effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. In the Statement and Objects of the said Act, defines “domestic violence” and it includes actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

10. Material on record disclose that the respondent was scolded, beaten-up and admitted in hospital. Evidence has been adduced with documentary proof. Two Courts have concurrently held on that aspect. When the findings recorded by the lower Court, are confirmed by the appellate Court, on appreciation of evidence, it cannot be said that the

findings are without any basis or perverse. Reading of both the judgments, makes it clear that there is no perverse finding. Once acts of Domestic Violence are substantiated, the aggrieved person is entitled to suitable orders, under Sections 18 to 23 of the Domestic Violence Act.

11. In **Krishnan v. Krishnaveni** reported in **AIR 1997 SC 987**, the Supreme Court held that scope of the revisional jurisdiction under Sections 397 and 401 Cr.P.C., is to consider the correctness or legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior Court.

12. In **Vimal Singh Vs. Khuman Singh & Anr.**, reported in **(1998) 7 SCC 223**, the Supreme Court held that interference by the High Court in exercise of revisional jurisdiction is limited to the exceptional cases viz. (i) when it is found that order under revision suffers from glaring illegality or has caused miscarriage of justice; (ii) When it is found that trial court has no jurisdiction to try the case; (iii) Where trial court has illegally shut out the evidence which otherwise ought to have been considered and (iv) Where material evidence which clinches the issue has been overlooked.

13. The scope of revisional jurisdiction to be exercised by this Court came up for consideration in **Johar and Others v. Mangal Prasad and Another** reported in **2008 Vol.2 Scale 122** and after considering a catena of decisions, the Supreme Court held as follows:

“Revisional jurisdiction of the High Court in terms of Section 397 read with Section 401 of the Code of Criminal Procedure is limited. The High Court did not point out any error of law on the part of the learned Trial Judge. It was not opined that any relevant evidence has been left out of its consideration by the Court below or irrelevant material has been taken into consideration. The High Court entered into the merit of the matter and it sought to re-appreciate the whole evidence and substitute by another possible view.”

14. Revisional power can be exercised only in a rare cases, to prevent miscarriage of justice, when there is a glaring defect in procedure, on a point of law, resulting in failure of justice or the Court has found that there is no jurisdiction to try the case or where the

material evidence has been overlooked. Testing the validity of the impugned orders, as to the abovesaid aspects and in particular, correctness, legality or propriety of the finding, recorded or the order passed, and as to the regularity of the proceedings, this Court is of the view that the petitioners have not made out a case for interference.

15. The contention of the petitioner that the learned Judicial Magistrate was biased and thus, passed orders, against the petitioners, cannot be accepted, for the reason that the appellate Court has considered the facts and evidence, independently, and has arrived at a specific conclusion of Domestic Violence. The further contention of the petitioner that the proceedings under the Domestic Violence Act, 2005, was a counter blast, to their complaint, against her, regarding the death of her son, is not substantiated. On the contrary, the Courts below have analysed the evidence adduced by both the parties, in proper perspective and thus, recorded a finding of domestic violence.

16. Order of the Judicial Magistrate, granting residence and protection orders and prohibiting alienation of assets and ordering

return of Shreedhana and other properties title deeds to the respondent, u/s. 19, 18, 18(e) and 19(8) of Protection of Women from Domestic Violence Act, cannot be said to have been passed, without judicial and logical mind, in arriving at the conclusion of domestic violence, as contended by the petitioners. Contention of an unfair enquiry, is also not substantiated.

17. For the abovesaid reasons, the Criminal Revision Case is dismissed.

03.03.2015

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To

1. The Ist Additional Sessions Court,
Chennai.
2. The XIV Metropolitan Magistrate, Egmore,
Chennai.

S. MANIKUMAR, J.

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Crl.R.C.No.114 of 2015

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