

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.179 of 2015
and M.P.Nos.1 & 2 of 2015

1. P.Rajkumar
2. Ms.Shanti

.. Petitioners

Vs

Mrs.Yoga @ Yogalakshmi

.. Respondent

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code to against the order dated 20.01.2015 passed in Crl.A.No.14 of 2014 on the file of the learned Principal District and Sessions Judge, Vellore District confirming the order dated 28.09.2012, passed vide M.C.No.2 of 2011 by the learned Judicial Magistrate No.1, Vellore, ordering in exparte against the petitioners.

For Petitioners : Mr.T.R.Sivaram

O R D E R

Criminal Revision Case is directed against the order dated 20.01.2015 passed in Crl.A.No.14 of 2014 on the file of the learned Principal District and Sessions Judge, Vellore, confirming the order dated 28.09.2012 passed in M.C.No.2 of 2011 by the learned Judicial Magistrate No.1, Vellore granting protection order under Section 18, permitting the respondent/wife to live in a portion of the house at D.No.35/1s, Kamarajar 2nd Street, LIC Colony, Sainathapuram, Vellore, and also against an order under Section 20 of the Act directing the petitioner/husband to pay a sum of Rs.10,000/- per month as maintenance on or before 5th of every English Calender Month.

2. Material on record discloses that M.C.No.2 of 2011, has been filed by the respondent, on the file of the learned Judicial Magistrate No.1, Vellore, against the husband and his mother, petitioners herein, alleging domestic violence and to take the case on file under Sections 18(a) (b) (c) (e) & (E), 19 (1) (a) (b) (c) (g) Sec.20(d) and Sec.22 of the Domestic Violence Act.

3. Averments deduced from the reading of both the impugned orders are that marriage between the parties was solemnized on 07.05.2009. According to the wife, at the time of marriage, 50 sovereigns of gold, five sovereigns of gold and a sum of Rs.1 Lakh for purchase of a car besides, silver and bronze vessels were given

as Stredhana. Sum of Rs.50,000/- was also given for purchase of other articles. Respondent/wife has further submitted that after their honeymoon trip, they lived together and petitioner/husband demanded dowry. She has also alleged that the husband/petitioner had insisted that the property which stood in her mother's name should be transferred in his favour.

4. Thereafter, on account of his office work, husband had gone to America. In M.C.No.2 of 2011, the respondent/wife has further averred that, when her father was indisposed of, she was not allowed to see him. Food was not given and that she was also made to do all the household works. She was treated as a servant. Respondent/wife has further, alleged that,

"subsequently, the first respondent shifted his employment from America to Chennai and is working as Software Engineer at Ericson Company, but he deserted the petitioner on the ground of dowry demand. All the belongings of the petitioners are with the first respondent's house. Hence, on 05.11.2010, the petitioner demanded her provisional certificate and the jewels. But, they have not given the same and on the other hand, on 09.11.2010, they lodged the complaint as against the petitioner and her father before the All Women Police Station. Further they threatened the life of the petitioner."

5. Material on record discloses that the petitioner/husband, has filed a counter affidavit, denying the allegations of domestic violence. According to him, she has not taken any steps to pass the examination for migration to America. Hence, he could not take her to America. Petitioner/husband, has further stated that wife had already filed, M.C.No.4 of 2011 on the file of the learned Chief Judicial Magistrate, Vellore District and hence the petition filed under the Tamilnadu Protection of Women from Domestic Violence Act, 2005, is not maintainable, as she is not entitled to invoke two parallel remedies for the same relief. In the counter affidavit, he has further submitted that it is the petitioner, who had left the matrimonial home on her own accord, desiring to stay with her parents and hence, she is not entitled to any Protection Order under Section 18 of the Domestic Violence Act. It is also his contention that in spite of the petitioner's request, she had not chosen to live with the husband. In the counter affidavit, the petitioner/husband, has further submitted that in order to harass, M.C.No.2 of 2011 has been filed under the provisions of the Tamilnadu Protection of Woman from Domestic Violence Act, 2005.

6. Reading of the order dated 28.09.2012 in M.C.No.2 of 2011, makes it clear that the respondent/wife has examined herself as PW1 and marked 13 documents viz., Ex.P1, Complaint given to the Protection Officer, Ex.P2, Marriage Invitation Card, Ex.P3, Marriage

Certificate, Ex.P4, Marriage Photos, Ex.P5, Ration Card, Ex.P6, Complaint given by the petitioner to Sub Inspector of Police, All Women Police Station, Vellore, Ex.P7, FIR, Ex.P8, Complaint given to the D.I.G., Exs.P9 & P10, List of Stredhana items, Ex.P11, Sale deed in the name of mother-in-law, Ex.P12, sale deed of the house, at Sainathpuram and Ex.P13, Sale Deed of vacant plot at Allapuram.

7. Thereafter, M.C.No.2 of 2011 has been posted on 07.09.2012. The petitioner has not appeared on the said date. Learned counsel for the petitioner/husband, had not appeared. Hence, the learned Judicial Magistrate No.1, Vellore has set the petitioner/husband exparte and proceeded further.

8. Material on record discloses that having after summarising the averments made in M.C.No.2 of 2011, the learned Judicial Magistrate No.1, Vellore, has observed that though the petitioner/husband has disputed the averments, he has not chosen to appear and adduce evidence. In M.C.No.2 of 2011, respondent/wife has contended that house at D.No.35/12, Kamarajar 2nd Street, LIC Colony, Sainathapuram, Vellore, was owned by husband. The petitioner has denied the same and further averred that it belongs to some other person. According to him, it was a leased house.

9. However, having regard to the words 'shared household', in terms of Section 2 's' of the Tamilnadu Protection of Woman from Domestic Violence Act, 2005, vide order dated 28.09.2012, the lower Court has held that the respondent/wife, is entitled to seek for a protection order under Section 18 of the Act and accordingly, granted the relief.

10. At this juncture, this Court deems it fit to extract Section 2 's' of Tamilnadu Protection of Woman from Domestic Violence Act, 2005, which is hereunder.

(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or alongwith the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household"

11. In so far as the claim under Section 20 of the Act, for monetary reliefs is concerned, the learned Judicial Magistrate No.1, Vellore, has not passed any orders. However, to meet the basic

amenities, learned Judicial Magistrate No.1, Vellore, has ordered maintenance of Rs.10,000/- to be paid to respondent/wife, on or before 5th of every English Calender Month. In addition to the above, learned Judicial Magistrate No.1, Vellore has directed the petitioner/husband and his relatives not to disturb the possession of the respondent/wife from the shared house hold and not to prevent her from entering into the house at D.No.35/1s, Kamarajar 2nd Street, LIC Colony, Sainathapuram, Vellore.

“12. மேலும் எதிர் மனுதாரரோ அல்லது அவரது உறவினர்களோ மனுதாரருக்கு எதிராக பங்குரிமையுள்ள வீட்டில் அவர் வசிப்பதற்கு எந்நவிதமான தடையோ பிரச்சனையோ கொடுக்கக் கூடாது என்றும் அந்த வீட்டில் வசிப்பதற்கு தடைகள் எதையும் ஏற்படுத்தக்கூடாது என்றும் நுழைய விடாமல் தடுக்கக் கூடாது என்றும் மனுதாரர் அவரது குடும்ப நபர்களுடன் தொடர்பு கொள்வதை எந்த முறையிலும் எதிர் மனுதாரரோ அல்லது அவரது உறவினர்களோ தடுக்க கூடாது என்றும் எதிர் மனுதாரர் மற்றும் அவரது உறவினர்களுக்கு உறுத்துக் கட்டளை வழங்கி உத்தரவிடப்படுகிறது.”

13. Section 19 of the Protection of Women from Domestic Violence Act, 2005, reads as follows:

“Residence orders.— (1)While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed

by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the Court may also pass an order directing the officer in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to."

14. Being aggrieved by the order made in M.C.No.2 of 2011 dated 28.09.2012 on the file of the learned Judicial Magistrate No.1, Vellore, the petitioner/husband has filed an appeal in CrI.A.No.14 of 2014. Summary of the grounds of the appeal made by the petitioner is extracted from the order made in the appeal, which is as follows.

"The trial Court failed to see that the application filed by the petitioner is neither sustainable at law nor is it sustainable on facts. The trial Court failed to see that the application preferred by the respondent herein under the Provisions of the Protection of Women for Domestic Violence Act was bereft of any pleadings. The trial Court failed to see that the petition mentions actually two house holds which in itself is proof of the falsity of the case of the respondent. The impugned order passed by the trial Court failed to specify and mention the premises where the residence order would be effective. This in itself is a defect. This is all the more so, when the first appellant is a resident in Chennai. The trial Court utterly failed to apply its mind to the fact that the learned Chief Judicial Magistrate, Vellore in a case for maintenance U/s.125 of Cr.P.C., in M.C.No.04/2011 which has been filed for the same relief. The trial Court utterly failed to appreciate the fact that the Protection Order granted by it is altogether irrelevant and unsustainable since first appellant himself had deposited Rs.15 lakhs in the Bank Account of the respondent even prior to the marriage to defray her educational expenses when she wanted to do TOFEL exams. The allegations were trumped up by the respondent with a view to blackmailing her husband to extort money from him and therefore, prays to allow the appeal."

15. Adverting to the grounds in the appeal, the learned Principal District and Sessions Judge, Vellore, has framed the following point for consideration.

"Whether the appellants/accused have committed the offences u/s.18 and 20 of Protection of Women from Domestic Violence Act?"

16. After considering the material on record, grounds of appeal the appellate Judge has come to an independent conclusion that the respondent/wife has established the factum of Domestic Violence caused by the petitioner/husband. Finding of the appellate Court, on the aspect of Domestic Violence, alleged against the petitioner/husband, is extracted hereunder.:

"6.... would clearly goes to establish the factum that the respondent herein had been subjected to domestic violence by the appellants. Furthermore, on perusal of trial Court records, it is a sad reflect on the part of the appellants that there is no rebuttal evidence on the side of the appellants to rebut the contention raised by the respondent before the trial Court."

17. On the aspect as to whether, the respondent/wife is entitled to seek for protective orders of residence under Sections 18 and 19 of the Act, the learned Appellate Judge at paragraph Nos.7 and 8, held as follows:

"7. Under such circumstances, I am of the opinion that Domestic Violence is undoubtedly, a human rights issue. Domestic Violence include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the women or her relatives would also be covered under this definition. This Act provides for the Rights of Women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household. Whether or not she has nay title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate. This Act empowers the Magistrate to pass Protection Order in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence. Furthermore, Section 3 of Domestic Violence defines as follows:-

"For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

U/s. 2(a) of the Act, it defines as follows:

"aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;"

8. In the light of the above discussions, I am of the opinion that though, the appellants raised as many as grounds in the appeal memorandum, the same are not sustainable either in law or on facts of the case that too when the respondent had made out a prima facie case as against the appellants."

18. Assailing the correctness of the order of the courts below, Mr.T.R.Sivaram, learned counsel for the petitioner submitted that the Courts below have failed to provide a reasonable opportunity to the petitioner, as mandated under Section 18 of the Act. There is no discussion on that aspect. The Courts below have failed to record a prima facie satisfaction of domestic violence.

19. It is also the contention of the learned counsel for the petitioners that the appellate Court ought to have considered that the learned Judicial Magistrate No.1, Vellore, in C.C.No.202 of 2011, had acquitted the petitioners of the charges, under Sections 294(b), 406, 498(A), 506(1) IPC., and Section 4 of the Dowry Prohibition Act and therefore, the accusation made against the petitioners, pertaining to harassment and cruelty, as well as demand of jewels, in the domestic violence complaint, are not true.

20. Placing reliance on a decision made in S.Senthil Kumar v. S.Nachal reported in 2013 (1) MLJ (Cr1.) 129, learned counsel for the petitioners submitted that the exparte order of maintenance, requires to be set aside, with liberty to the petitioners to defend the claim for maintenance. For the abovesaid reasons, he prayed to set aside the orders, passed in M.C.No.2 of 2011, dated 28.09.2012, on the file of the Judicial Magistrate No.1, Vellore and Cr1.A.No.14 of 2014, dated 20.01.2015, on the file of the learned Principal District and Sessions Judge, Vellore District.

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

21. Perusal of the order made in M.C.No.2 of 2011, dated 28.09.2012, on the file of the Judicial Magistrate No.1, Vellore, shows that an application has been filed under Section 12 of the Act, praying for the reliefs, under Sections 18(a) (b) (c) (e) &(E), 19 (1)(a)(b)(c)(g), 20(d) and 22 of the Domestic Violence Act. The 1st petitioner/husband has filed a counter affidavit. Thereafter, respondent/wife, has examined herself as PW.1 and marked 13 documents, as Exs.P1 to P13. The case was posted on 07.09.2012, for appearance of the petitioners. Neither the learned counsel for the

petitioners nor the petitioners appeared. Hence, the learned Judicial Magistrate No.1, Vellore, set the petitioners/husband and mother, ex parte and proceeded to consider the pleadings and evidence adduced by the respondent/wife. Thereafter, during trial, the petitioners/husband and mother, have filed a counter affidavit and denied the allegations. However, the trial Court has found that though the petitioners have denied the allegations, by filing a counter affidavit, they have not substantiated their contentions, by adducing any oral or documentary evidence.

22. Though the respondent/wife has sought for monetary relief, under Section 20 of the Domestic Violence Act, taking note of the evidence adduced, the trial Court has declined to grant the relief. However, the trial Court has granted residence order, under Section 19 of the Act. Considering the moral and legal obligations of the husband to pay maintenance, the trial Court has ordered Rs.10,000/- per month as maintenance on or before 5th of every English Calendar Month.

23. Before the appellate Court in Crl.A.No.14 of 2014, though the husband has raised a ground that there is no finding of domestic violence, empowering the trial Court to grant maintenance and residence order, the appellate Court has framed a point for consideration, as to whether, the appellants have committed the acts, falling within the definition of domestic violence, under Sections 18 and 20 of the Protection of Women from Domestic Violence Act.

24. The appellate Court, upon considering the evidence of PW.1 and perusal of recitals in Ex.P1 - Complaint given to the Protection Officer, Ex.P6 - Complaint to the Sub Inspector of Police, All Women Police Station, Vellore, Ex.P7 - FIR and Ex.P8 - Complaint to the DIG, Vellore, has held that the above evidence would clearly establish the fact that the respondent/wife had been subjected to domestic violence by the petitioners/husband and mother. The appellate Court has further held as follows:

"Furthermore, on perusal of trial Court records, it is a sad reflect on the part of the appellants that there is no rebuttal evidence on the side of the appellants to rebut the contention raised by the respondent before the trial Court."

25. After extracting Section 2(a) of the Domestic Violence Act, which defines "Aggrieved Person" and considering the facts and circumstances of the case, the appellate Court has concluded that the petitioners/husband and mother had subjected the respondent/wife, to domestic violence, for which, the respondent-wife, is entitled for the relief, envisaged under the Domestic Violence Act.

26. Even taking it for granted that the trial Court, without recording any specific finding as to domestic violence or maintenance, that would not vitiate the proceedings, for the reason that after considering the evidence, the appellate Court has clearly recorded that the wife was subjected to domestic violence. Having regard to the nature of evidence, duly appreciated by the Court below, in particular, by the appellate Court, it cannot be contended that there was no evidence at all.

27. The order made in M.C.No.2 of 2011, dated 28.09.2012, on the file of the learned Judicial Magistrate No.1, Vellore, cannot be considered as an ex parte order or without any counter affidavit, filed by the petitioners/husband and mother. After filing the counter affidavit and when the matter was posted for examination of PW.1, respondent-wife, the petitioners/husband and mother, have conveniently remained absent. Thereafter, the respondent/wife, has examined herself as PW.1 and marked 13 documents as Exs.P1 to P13. Considering the oral and documentary evidence, adduced by the respondent/wife, the trial Court has ordered residence order, under Section 19 of the Act and also maintenance of Rs.10,000/- per month, on or before 5th of every English Calendar Month.

28. When the correctness of the same was tested before the appellate Court, the fact finding authority has gone into the entire evidence and categorically recorded domestic violence, against the wife. Though the revision petitioners/husband and mother, have stated that they were acquitted the charges, under Sections 294(b), 406, 498 (A), 506(1) IPC., and Section 4 of the Dowry Prohibition Act, by the learned Judicial Magistrate No.1, Vellore, in C.C.No.202 of 2011 and that therefore, the accusation made against the petitioners, pertaining to harassment and cruelty, as well as demand of jewels, as alleged by the respondent, in the domestic violence complaint, are not correct, perusal of the appellate Court does not indicate, as to whether, the revision petitioners have chosen to mark the judgment in C.C.No.202 of 2011, as a document in the appeal, with the leave of the Court.

29. Thus, on the materials available on record, the learned Principal District and Sessions Judge, Vellore District, has properly recorded a finding of fact. There is no perversity in the orders of the Courts below. The decision in S.Senthil Kumar v. S.Nachal reported in 2013 (1) MLJ (Cr1.) 129, may not be in strict sense, be applicable to the facts of this case.

30. For the reasons, stated supra, the present revision case is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

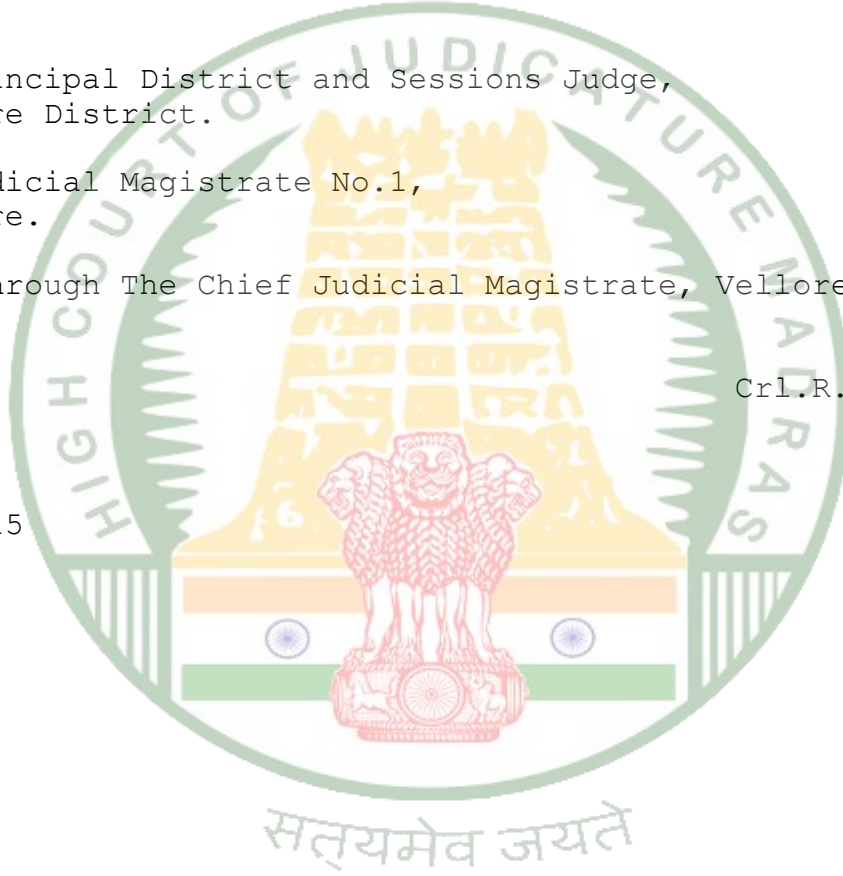
skm

To

1. The Principal District and Sessions Judge,
Vellore District.
2. The Judicial Magistrate No.1,
Vellore.
3. -do- Through The Chief Judicial Magistrate, Vellore.

Crl.R.C.No.179 of 2015

JP(CO)
EU 22.05.15



WEB COPY