

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.187 of 2015

1.Rizwana Banu .R

2.Suha Fathima (Minor)

.. Petitioners

[minor rep. by 1st petitioner mother]

Vs

1.Syed Abdul Nazer

2. Syed Abdul Rouf

3. Noorunissa

4. Ejaz

5. Suraiya

... Respondents

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code to set aside the order dated 30.01.2015 in Crl.M.P.No.1511 of 2015 in C.A.No.22 of 2015 on the file XIX Additional Fast Track Sessions Court, Chennai, so far as the education expenses of the minor and return of her gold jewellery and articles are concerned.

For Petitioners : Mrs. Shaik Mehrunisa

O R D E R

Criminal Revision Case is directed against the order dated 30.01.2015 in CMP No.1511 of 2015 in C.A.No.22 of 2015 on the file of the learned XIX Additional Fast Track Sessions Court, Chennai.

2. Material on record discloses that petitioner has filed a complaint under Section 12 of the Tamilnadu Protection of Women from Domestic Violence Act, 2005, which has been assigned as Crl.M.P.No.266 of 2010 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai. Counter affidavit has been filed by the 2nd respondent in Crl.M.P.No.266 of 2010. Thereafter, the said case has been transferred to the file of learned XXIII Metropolitan Magistrate, Saidapet, Chennai. Counter affidavits of the 1st respondent and 3rd respondent have been filed. Thereafter, upon considering the material on record, vide order dated 08.01.2015 in Cr.M.P.No.266 of 2010, the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, has passed the following orders:

1. To pay maintenance at the rate of Rs.5,000/- to the petitioners

2. Residence order at Old No.25, New No.57, Mir Bakshi Ali Street, Royapettah, Chennai - 14,
3. Return of jewels, if any given
4. Rs.3,00,000/- for compensation and education expenses of the minor and general protection order under the Tamilnadu Protection of Women from Domestic Violence Act, 2005.

3. Being aggrieved by the orders made in Crl.M.P.No.266 of 2010, dated 08.01.2015, husband and others have filed C.A.No.22 of 2014 before the learned Principal Sessions Judge, Chennai. In Crl.M.P.No.1511 of 2015 in C.A.No.22 of 2014, they have sought for interim stay of the operation of the orders stated supra. Upon hearing the learned counsel for the appellants, the learned XIX Additional Judge, City Civil Court, Chennai, has granted interim stay of the operation of the orders in Crl.M.P.No.266 of 2010 dated 08.01.2015 and thereafter extended the same upto 13.02.2015. While doing so, the learned XIX Additional Judge, City Civil Court, Chennai, has also ordered notice to the respondents therein/revision petitioners through Court and RPAD.

4. Typed Set of papers, filed along with the present revision case, by the petitioners viz., wife and minor daughter, indicate that a counter affidavit has also been filed by them to M.P.No.41 of 2015 in C.A.No.22 of 2014. During the Course of hearing Ms.Shaikh Mehrunisa, learned counsel for the petitioners submitted that M.P.No.41 of 2015, has been filed for an order to vacate the petitioner from the shared house hold. In the said counter affidavit, the petitioners have prayed the following:

- (1) to dismiss Crl.M.P.No.41 of 2015 in C.A.No.22 of 2015 for want of maintainability
- (2) to direct the respondents to hand over one key of the main gate and allow the petitioners a free passage and peaceful existence
- (3) to protect the petitioners possession and their right to reside in the shared house hold as per the Hon'ble Court's order and also direct the respondents not to evict or exclude the petitioners from the shared household
- (4) to handover the possession of the portion (first floor) to the petitioners , as it was taken away by force from the petitioners.

5. From the impugned order dated 30.01.2015, made in Crl.M.P.No.1511 of 2015 in C.A.No.22 of 2014 against Crl.M.P.No.266 of 2010 dated 08.01.2015 on the file of the learned XIX Additional Judge, City Civil Court, Chennai, it could be deduced that it is only an interim order passed in the said petition and that the learned XIX Additional Judge, City Civil Court, Chennai, has ordered notice to the respondents therein, through Court and Registered Post with Acknowledgment Due. From the filing of the counter to M.P.No.41 of

2014 in C.A.No.22 of 2015, and the present revision case, it could be also deduced that the petitioners are very much aware of the interim orders dated 30.01.2015.

6. Remedy by filing an application for modification or alteration and revocation of an interim order, is available to the petitioners. It is always open to the revision petitioners to file an application to vacate the interim orders dated 30.01.2015 in Cr.M.P.No.1511 of 2015 in C.A.No.22 of 2015 on the file of the learned XIX Additional Judge, City Civil Court, Chennai and also file a counter affidavit. Petitioners can also make a request to the said Court to take the appeal and dispose of the same as expeditiously as possible.

7. As the impugned order is only interim in nature, and the course which should have been taken is to vacate the same, this Court is not inclined to entertain the revision petition. Further, what is impugned in this revision petition is only an interim order granted on 30.01.2015 and extended upto 13.02.2015, and on this day, when the revision case is taken up for hearing, it could be presumed that the order dated 30.01.2015, would have been either extended or altered, after 13.02.2015. As such the impugned order dated 30.01.2015, cannot be assailed.

8. For the reasons stated supra, Criminal Revision Cpetition is dismissed, leaving it open to the petitioners to approach the appellate Court.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

ars

To

1. The XIX Additional Fast Track Sessions Court,
Chennai.

msm[co]
rd20/3/15.

Cr1.R.C.No.187 of 2015