

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2015

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Cr1.R.C.No.365 of 2015

Shubhashree

... Petitioner

vs

Srinivasa Rao

... Respondent

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order passed by learned XVII Metropolitan Magistrate, Saidapet, Chennai, in M.P.No.5374 of 2014 dated 13.02.2015.

For Petitioner : Mr.Harshad P. Goklaney

O R D E R

Petitioner challenges the order of learned XVII Metropolitan Magistrate, passed in M.P.No.5374 of 2014 on 13.02.2015.

2. Petitioner has moved an application u/s.12 of the Protection of Women from Domestic Violence Act (herein after the 'Act') before learned XVII Metropolitan Magistrate, Saidapet, Chennai, seeking maintenance towards medical and other expenses for herself and her children. The Court below permitted private notice and there upon the respondent was served. Being satisfied that notice taken out privately had been duly served, the court below proceeded to set the respondent ex-parte and passed an order in favour of the petitioner. The court below granted the petitioner the following reliefs:

- A: Loss of earnings: Rs,20,000/- (rupees Twenty Thousand only) per month
- B: Medical Expenses Rs.15,000/- (rupees Fifteen Thousand only) per month
- C: Loss due of Physical abuse and mental torture: Rs.50,00,000/- (Rupees fifty lakhs only)
- D: Food and Provisions: Rs.30,000/- (Rupees Thirty thousand only) per month
- E: Tution fees and College Expenses: Rs.25,000/-

(rupees Twenty five thousand only) per month
F: Household Expenses (inclusive of Rent, maintenance charges, maids salary, electricity charges, pet maintenance, entertainment) Rs.90,000/- (Rupees ninety thousand only) per month
G: Travel allowance: Rs.10,000/- (Rupees Ten thousand only) per month
H: Savings/Contingency Fund Rs.50,000/- (Rupees fifty thousand only) per month
I: Mediclaim: Rs.20,000/- (Rupees Twenty thousand only) per month.

Prior to the passing of the order, the court below proceeded without obtaining a report from the Protection Officer and without effecting service on the respondent in keeping with Section 13 of the Act. Apprehending that as a result thereof she could be denied the benefit of the order which may be passed in her favour, petitioner has filed a memo informing that it was necessary for the court below to obtain a report from the Protection Officer and that service has to be effected on the respondent through the Protection Officer as contemplated u/s.13 of the Act. Ignoring such memo, the court below has proceeded and passed an order dated 13.02.2015.

3. Heard the learned counsel for petitioner.

4. The premise upon which the petitioner has moved the memo before court below is unfounded. Section 12(1) of the Act permits the aggrieved party to move an application for seeking certain reliefs. The requirement u/s.12(1) of the Act of consideration of the report of the Protection Officer should be read as one applicable where there is a report of Protection Officer before court as on the date of application. Section 12 (1) of the Act cannot be construed as one whereunder the court is upon an obligation to await the report of the Protection Officer. The purpose of requiring service of notice through the Protection Officer within a period of two days is to enable the aggrieved party to have an early hearing and early relief, if her claim be just. When service is effected on the respondent in a manner other than that under Section 13 of the Act, it would not be open to the respondent to raise a plea that he has not been served in keeping therewith and hence, service has not been duly effected upon him. The primary purpose of issuing notice/service to the other side in any case is to make the other side aware of the proceedings before court. Once the purpose is served, it matters little how the same is done.

5. For the aforesaid reasons, this revision shall stand dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To
The XVII Metropolitan Magistrate, Saidapet, Chennai
+ 2 ccs to Mr.Harshad P. Goklaney, Advocate Sr.64726

Crl.R.C.No.365 of 2015

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