

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.3.2015

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THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Cr1.R.C.No.1540 of 2012
Tr.Cr1.O.P.No.22381 of 2013
and
M.P.No.1 of 2014

Tmt.Sangamithra Petitioner in both
the cases

vs.

1.Sridhar Swaminathan
2.P.Muthulakshmi Respondents in
both the cases

Criminal revision case filed under Section 397 read with Section 401 of Cr.P.C. against the order dated 30.10.2012 passed by the District and Sessions Court, Tirupur, in C.A.No.7 of 2012 confirming the order passed by the Judicial Magistrate No.1, Tirupur in Cr.M.P.No.2509/12 dated 22.6.2012 and allow the Cr1.R.C.

Tr.Criminal Original Petition filed under Section 407 of Cr.P.C. seeking to withdraw the case in D.V.A.No.1 of 2012 on the file of the learned Judicial Magistrate, No.1, Tiruppur and transfer the same to the file of any other Judicial Magistrate at Dindigul.

For Petitioner : Mr.T.Saikrishnan

For Respondents : Mr.D.Muthuselvam

COMMON ORDER

Record of proceedings in Tr.Cr1.O.P.No.22381 of 2013 shows that this Court, in M.P.No.1 of 2013 in Tr.Cr1.O.P.No.22381 of 2013, has granted interim stay of the proceedings in D.V.A.No.1 of 2012, on the file of the learned Judicial Magistrate No.1, Tiruppur and that the same has been periodically extended. In the supporting affidavit to the transfer original petition, the

wife/petitioner has stated that during the month of July 2013, at about 11.00 a.m., the first respondent/husband came along with his mother/second respondent and threatened the petitioner and her mother with dire consequences. It is also the allegation of the wife in the affidavit that unless and until the petitioner co-operated with the first respondent for divorce, he would teach her a lesson. According to the petitioner, she was constantly threatened by the first respondent. Her father was living at Dindigul. On the above allegations of threat, the petitioner has sought for a direction to withdraw D.V.A.No.1 of 2012, on the file of the learned Judicial Magistrate Court No.1, Tiruppur and transfer the same to the file of the learned Judicial Magistrate, Dindigul.

2. During the course of hearing, when a specific question was posed to Mr.Saikrishnan, the learned counsel for the petitioner as to whether the petitioner preferred any complaint to any police station regarding the threat, as alleged in Paragraph Nos.7 and 8 of the supporting affidavit to the transfer petition, the reply of the learned counsel was that no such complaint was lodged. Thus, from the above, it is evident that the allegations of threat has not been substantiated. It is well settled that mere averments in the affidavit would not amount to proving the incident. On the facts and circumstances, this Court is of the view that the petitioner, has not made out a case for transfer. Hence, the transfer Criminal Original Petition is dismissed.

3. As regards the prayer sought for in Crl.R.C.No.1540 of 2012, the perusal of the order made in Crl.A.No.7 of 2012, dated 30.10.12, on the file of the learned Principal Sessions Judge, Tirupur, shows that the learned Judge has considered the reliefs that could be granted under sections 19 and 20 of the Protection of Women from Domestic Violence Act, 2005, and by observing that an order of interim maintenance is aimed only to preserve the existence of an individual not able to maintain herself and that it should also be consistent with the standard of living to which the wife was accustomed, confirmed the interim maintenance at Rs.5000/- per month.

4. On the aspect of the relief to provide shelter or in other words, residence at Aathal Thottam and Veerapandi Village, Tiruppur is concerned, the learned appellate Judge, by observing that the properties in which residence order is claimed, belong to the second respondent in D.V.A.No.1 of 2012 and not to the husband, held that the same cannot be taken as a share household within the meaning of Sec.2(S) of the Act. In this context, the learned appellate Judge, while concurring with the view taken by the trial Court, has taken note of the decision of the Supreme Court in S.R.Batra and another Vs.Tharun Batra (2007 SCC 170 = CDJ

2007 SC 2009) and Umesh Sharma vs. State (2010 D.M.C 556). Upon perusal of the records, the learned Judge has also observed that the petitioner/wife has not produced any document to show that the properties belonged to her husband.

5. Though the petitioner has alleged that the respondents are owning agricultural lands and earning Rs.10 lakhs and further averred that the first respondent is running an export company under the name and style of "Red Square exports" and earning Rs.5 Crores from the business, she has not produced any document to prove the same.

6. For the reasons stated supra, the learned appellate Judge had declined to grant the reliefs (b) and (c) prayed for in the interim application filed under Section 23 of the Protection of Women from Domestic Violence Act, 2005, and sustained the quantum of maintenance at Rs.4000/-.

7. Though Mr.T.Saikrishnan, learned counsel for the petitioner/wife assailed the correctness of the order and submitted that both the impugned orders require to be set aside and also prayed that the interim maintenance ordered should be enhanced, this Court is not inclined to accept the said contentions.

8. Going through the impugned orders, this Court is of the view that every contention raised by the petitioner, in support of the reliefs sought for under Section 23 of the Protection of Women from Domestic Violence Act, 2005, has been considered properly with reference to the pleadings and evidence and that there is no manifest illegality, warranting interference in the present revision.

9. Though Mr.D.Muthuselvam, the learned counsel for the respondents made submissions assailing the order of maintenance, this Court is not inclined to consider his submissions for the sole reason that the husband has not chosen to challenge the order of maintenance granted by the lower Court nor chosen to challenge the protection order granted under Section 18 of the Act. Hence, the criminal revision case is dismissed.

10. The Criminal Revision Case is pending since 2012 and the Transfer Original Petition is also pending from 2013. Consequent to the order now passed in both these cases, the learned Judicial Magistrate No.I, Tiruppur, is directed to take up the main D.V.A.No.1 of 2012 and dispose of the same within three months from the date of receipt of a copy of this order.

11. It is represented by Mr.T.Saikrishnan, learned counsel for the petitioner that ever since the interim order of maintenance was granted by the learned Judicial Magistrate, No.1, Tirupur, husband has not paid any amount.

12. On the above aspect, Mr.D.Muthuselvam, the learned counsel for the respondent is not in a position to give any reply. However, the Protection of Women from Domestic Violence Act, 2005 contemplates remedy of penalty for breach of protection order by the respondent. In the above circumstances, it is always open to the petitioner/wife to take recourse under the law.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

msk

To

1. The District and Sessions Court, Tirupur
- 2.The Judicial Magistrate, No.1, Tiruppur
3. Thro the Chief Judicial Magistrate
Tirupur

Copyt o

The Public Prosecutor,
High Court, Madras

1 cc to M/s. Sai Bharath & Ilan, Advocate, Sr. 13465

1 cc to M/s. S. Gunalan, Advocate, Sr. 13170

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Tr.CrI.O.P.No.22381 of 2013

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