

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.07.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.R.C.No.1226 of 2014

Manimegalai

.. Petitioner/Petitioner

Vs.

Ramanujam

.. Respondent/Respondent

Prayer :- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to call for the records in Crl.A.No.201 of 2013 dated 06.06.2014 on the file of the II Additional Sessions Judge, Chennai partly confirming the order dated 19.09.2013 in Crl.MP.No.2847 of 2013 in MC.No.1 of 2013 on the file of IX Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : Mrs.P.Uma

For Respondent : Mr.M.Palanivel.

ORDER

The criminal revision petition is directed against the order passed by the learned II Additional Sessions Judge, Chennai in Crl.A.No.201 of 2013 dated 06.06.2014 partly allowing the order passed by the learned IX Metropolitan Magistrate, Saidapet, Chennai made in Crl.MP.No.2847 of 2013 in MC.No.1 of 2013 dated 19.09.2013, granting the relief under Sections 18 and 19 of the Domestic Violence Act and by awarding Rs.3,000/- per month as interim maintenance under Section 20 of the said Act.

2. It is admitted by the petitioner that she filed the petition under Sections 18, 19 and 20 of the Protection of Women from Domestic Violence Act, 2005 before the IX Metropolitan Magistrate, Saidapet, Chennai. The petitioner filed petition in Crl.MP.No.2847 of 2013 in MC.No.1 of 2013 for interim relief. After hearing both sides, the learned Metropolitan Magistrate passed protection order and residence order under Section 18 and 19 of the Domestic Violence Act and directed to pay monthly maintenance of Rs.3,000/- p.m. under Section 20 of the Domestic Violence Act. Aggrieved over the said order, the respondent/husband filed appeal in Crl.A.No.201 of 2013 before the II Additional Sessions Court, Chennai. During the pendency of criminal appeal, the husband preferred Crl.MP.No.5077 of 2016

to receive the additional documents, the lower appellate court allowed the petition and the proposed documents are ordered to be received as additional evidence for consideration in the appeal. After hearing the arguments of both sides, the lower appellate Court partly allowed the order of the trial Court, thereby setting aside the order of the trial Court passed under Sections 18 and 19 of the Domestic Violence Act and directed the husband to pay monthly maintenance of Rs.3,000/-p.m. to the wife under Section 20 of the Domestic Violence Act. Aggrieved against the said order, the wife/revision petitioner filed criminal revision before this Court.

3.Heard the rival submissions made on both sides and perused the records.

4.It is seen from the order of the trial Court in CrI.MP.No.2847 of 2013 in MC.No.1 of 2013, no documents was produced on either side and no evidence was also adduced by both parties, before the IX Metropolitan Magistrate, Saidapet, Chennai. The appellant/husband has also filed separate petition to receive additional documents in CrI.MP.No.5077 of 2014 in CrI.A.No.201 of 2013, the petition was allowed and the documents proposed to be filed are ordered to be received as additional evidence for consideration in the appeal. Even in the said order there is no mention of documents or list of documents annexed. The criminal appeal was filed by the appellant/husband, in the appeal judgment also no where it is stated anything about the description of the documents or list of documents annexed to the judgment, but some of the documents were received by the same court as per order in CMP.No.5077 of 2016 in CrI.A.No.201 of 2013. The said documents were not at all stated or mentioned in the appeal judgment. Even though, the appellate Court ordered to receive additional documents which are necessary to dispose of the appeal, the list of documents and the particulars of the documents are not at all mentioned in the above said judgment which is very fatal to the judgment.

5.The appellate Court ought to have mentioned about the document produced on the side of the appellant, which are necessary to prove the case of both parties and not mentioned about the date and description of the documents in the body of the judgment and also in the list of documents on the side of the appellant.

6.In the above said circumstances, the absence of marking the documents produced on the side of the appellant before the appellate Court is not correct in the eye of law and the judgment passed by the II Additional Sessions Judge, Chennai in CrI.A.No.201 of 2013 is liable to be set aside and the same is hereby set aside.

7.In the result, the criminal revision is allowed by setting aside the judgment of the lower appellate Court made in Crl.A.No.201 of 2013 dated 06.06.2014 on the file of II Additional Sessions Judge, Chennai and the Crl.A.No.201 of 2013 is remitted back to the lower appellate court for fresh disposal, after giving an opportunity to both parties to adduce additional documents and the lower appellate Court is hereby directed to dispose of the appeal within a period of three weeks from the date of receipt of copy of this order.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The II Additional Sessions Judge, Chennai.  
The IX Metropolitan Magistrate, Saidapet, Chennai.

+1 cc to Ms.Puma Advocate sr.42309

+1 cc to Mr.M.Palanivel Advocate sr.42263

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