

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders Reserved on : 27.07.2016)

DATED : 02.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.Nos.1252 of 2014 and 152 of 2015

and

M.P.Nos.1 of 2014 and 1 of 2015

In Crl.R.C.No.1252 of 2014:

Mr.Michael Arul Petitioner

Vs.

Mrs.Jennifer Arul Respondent

In Crl.R.C.No.152 of 2015:

Mrs.Jennifer Arul Petitioner

Vs.

Mr.Michael Arul Respondent

Prayer in Crl.R.C.No.1252/2014: Criminal Revision Case filed under Sections 397 r/w. 401 of the Code of Criminal Procedure, praying to call for the records and to set aside the order passed by the learned IV Additional Sessions Judge, City Civil Court, Chennai, in C.A.No.137 of 2011 on 30.10.2014, with respect to the payment of maintenance and rent by the petitioner modifying the order in Crl.M.P.No.216 of 2009 passed by the learned XIV Metropolitan Magistrate, Egmore, Chennai.

Prayer in Crl.R.C.No.152/2015: Criminal Revision Case filed under Sections 397 r/w. 401 of the Code of Criminal Procedure, praying to call for the records pertaining to the order dated 30.10.2014 passed in C.A.No.137 of 2011, by the learned IV Additional Sessions Judge, City Civil Court, Chennai, and revising the order made in M.P.No.216 of 2009, dated 29.06.2011 passed by the learned XIV Metropolitan Magistrate, Egmore, Chennai.

In Crl.R.C.No.1252/2014

For Petitioner : Mr.N.R.Elango, Senior Counsel
for Mr.R.Vivekanandan

For Respondent : Mr.George Cheriyan

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In CrI.R.C.No.152/2015

For Petitioner : Mr.George Cheriyan
For Respondent : Mr.R.Vijayakumar
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COMMON ORDER

Both the Criminal Revision Cases are directed against the order dated 30.10.2014 passed by the learned IV Additional Sessions Judge, City Civil Court, Chennai, in C.A.No.137 of 2011 modifying the order in CrI.M.P.No.216 of 2009 passed by the learned XIV Metropolitan Magistrate, Egmore, Chennai.

2. The brief facts leading to both the revision cases are as follows:-

Mrs.Jennifer Arul has filed a petition in CrI.M.P.No.216 of 2009 against her husband Mr.Michael Arul under Section 12 of the Protection of Women from Domestic Violence Act 45 of 2005 (hereinafter referred to as the Act) before the learned XIV Metropolitan Magistrate, Egmore, Chennai, claiming maintenance and damages etc., and permitting her to live in the share hold house Door No.348, Pantheon Road, Egmore, Chennai. The learned Magistrate, after perusing the entire evidence adduced on either side, finally on 29.06.2011, directed the respondent therein/husband to pay Rs.2 Crores as maintenance towards her future as per Section 20 of the Act and further, directed the respondent/husband to pay a sum of Rs.50 lakhs as compensation for each count of the problems totally, Rs.3 Crores as per Section 23 of the Act. Further, the Inspector of Police, within whose jurisdiction the above said residence is situated, was directed to give necessary protection to the petitioner/wife in implementing the order passed by the Court as per Section 18 of the Act.

3. Aggrieved against the said order passed by the learned XIV Metropolitan Magistrate, Egmore, Chennai, the respondent therein/husband had preferred an appeal before the learned IV Additional Sessions Judge, City Civil Court, Chennai, and the appeal was taken on file as C.A.No.137 of 2011. The First Appellate Court, after hearing the arguments made on either side and after perusing the entire documents, finally, allowed the appeal in part on 30.10.2014, and directed the appellant therein/husband to pay a sum of Rs.75,000/- per month towards rent for the residential accommodation for his wife from the date of filing of the petition and further directed the appellant therein/husband to pay a sum of Rs.1,00,000/- per month as maintenance to the respondent therein/wife towards her future from the date of filing of the petition.

4. Aggrieved by the said order passed by the learned IV Additional Sessions Judge, the appellant therein/husband had

preferred criminal revision case in Crl.R.C.No.1252 of 2014 and the respondent therein/wife had preferred criminal Revision Case in Crl.R.C.No.152 of 2015 before this Court.

5. Since both the revisions arose out of the common order dated 30.10.2014 passed by the learned IV Additional Sessions Judge, City Civil Court, Chennai, in C.A.No.137 of 2011 modifying the order in Crl.M.P.No.216 of 2009, dated 29.06.2011 passed by the learned XIV Metropolitan Magistrate, Egmore, Chennai, in the revisions, both sides arguments were heard jointly and common order is pronounced in both the criminal revision cases.

6. The learned Senior Counsel appearing for the revision petitioner in Crl.R.C.No.1252 of 2014/husband would mainly contend that the First Appellate Court, without appreciating the entire facts and circumstances of the case, wrongly came to a conclusion and directed the revision petitioner/husband to pay a sum of Rs.75,000/- per month towards rent for residential accommodation for the respondent/wife from the date of filing of the petition under the Act. Further, the First Appellate Court, without considering the arguments and also without considering the fact that the respondent/wife is also working and earning, wrongly awarded a sum of Rs.1 lakh per month towards maintenance from the date of filing of petition under the Act. It further contended by the learned Senior Counsel that the First Appellate Court ought to have held that the respondent/wife is not entitled for shared house hold. Since the respondent/wife is earning monthly salary of Rs.20,000/- per month, she is not entitled for shared house hold as defined under the Act in Door No.348, Pantheon Road, Egmore, Chennai, which belongs to the revision petitioner's mother. The revision petitioner denies all the allegations including the physical violations and the relationship with several woman as alleged by the respondent/wife. The respondent/wife was working as Managing Director in the Advent computer services limited during the year 1987. The learned Senior Counsel appearing for the revision petitioner/husband also contended that the First Appellate Court failed to consider the fact that no wife shall be entitled to receive maintenance from her husband under Section 125 of Cr.P.C., if she is living in adultery or without any sufficient reason refused her husband. Hence, the First Appellate Court, without considering the above fact, erroneously directed the revision petitioner/husband to pay a sum of Rs.75,000/- per month towards rent and also directed to pay a sum of Rs.1 lakh towards maintenance to the respondent/wife from the date of filing of the petition. The order passed by the First Appellate Court/IV Additional Sessions Judge, granting maintenance and rent is illegal and incorrect one.

7. Further, the learned Senior Counsel appearing for the revision petitioner in Crl.R.C.No.1252 of 2014/husband mainly contended in the revision on three grounds which are as follows:-

The First Appellate Court has not considered the personal income of the respondent/wife and also the First Appellate Court has failed to consider the term maintenance which is not defined in the Act and it has to rely upon Section 125 of Cr.P.C. Further, the First Appellate Court, without any basis, fixed Rs.1,00,000/- per month towards maintenance and a sum of Rs.75,000/- per month towards rent for the respondent/wife. Except the above three grounds, no other specific grounds were raised in the revision to question the order of the First Appellate Court. Hence, the order passed by the First Appellate Court/IV Additional Sessions Judge, City Civil Court, Chennai, has to be set aside and the revision preferred by the husband in CrI.R.C.No.1252 of 2014 has to be allowed. The learned Senior Counsel for the revision petitioner/husband would also submit that since there is no merit in the order of the learned IV Additional Sessions Judge, City Civil Court, Chennai, and the order of the learned XIV Metropolitan Magistrate, Egmore, Chennai, the revision preferred by the respondent/wife has to be dismissed.

8. The learned counsel appearing for the revision petitioner in CrI.R.C.No.152 of 2015/wife would mainly contend that the trial Court, after appreciating the entire facts and circumstances of the case, awarded proper compensation and damages to the revision petitioner/wife. But the First Appellate Court, without considering and analysing the evidence and documents produced on the side of the petitioner, not paid the compensation of maintenance awarded by the learned Magistrate. Further, the First Appellate Court failed to consider the fact that for each count the revision petitioner/wife is entitled for compensation of Rs.50 lakhs totally, Rs.3 Crores. The First Appellate Court, erroneously observed in its judgment regarding the fact and came to a wrong conclusion. The First Appellate Court has not taken into consideration the fact that the respondent/wife had filed proof affidavit running to 32 pages on 25.07.2012 and none of the documents are besides illegible running to 225 pages. It is also contended that the trial Court has not allowed the petitioner/wife to give oral and documentary evidence and failed to give a chance to examine herself in the chief examination. But contrary to that, the First Appellate Court allowed the respondent/husband to file proof affidavit with unauthenticated documents. The First Appellate Court has failed to appreciate the character of the respondent during the course of examination and the respondent, repeatedly, gave evasive version to the questions. In view of this, the order passed by the trial Court in CrI.M.P.No.216 of 2009, dated 29.06.2011, has to be confirmed and the criminal revision case in CrI.R.C.No.152 of 2015 preferred by the petitioner/wife has to be allowed.

9. The learned counsel for the revision petitioner in CrI.R.C.No.1252 of 2014/wife, mainly contended that the trial Court, after considering the entire facts and circumstances of

the case, correctly awarded compensation of Rs.3 Crores. But the First Appellate Court, without considering the facts, modified the order of the trial Court to a minimum relief and awarded Rs.1,00,000/- per month towards maintenance and Rs.75,000/- per month towards rent from the date of filing of the petition. Hence, the learned counsel prayed that the order of the First Appellate Court has to be set aside and the order of the trial Court has to be confirmed.

10. It is admitted by both sides that both the revision petitioners are the couples and their marriage took place on 02.12.1972 at the sacred Heart Cathedral, New Delhi and the wife gave birth to a male child in the year 1974 in Chennai and the wife is living with her husband at Door No.348, Pantheon Road, Egmore, Chennai. Further, it is not denied that the above said residence at Door No.348, Pantheon Road, Egmore, Chennai, is independent house measuring to an extent of 4000 sq. ft. with servant quarters, garage apartment land with garden and several house. At the time of marriage, the revision petitioner in Crl.R.C.No.152 of 2015/wife was working as Air Hostess with British Airways. After the marriage, she resigned her service as Air Hostess. Further, it is not disputed by both the parties that the father of the revision petitioner in Crl.R.C.No.1252 of 2014 was former Inspector General of Police, a man of integrity and the husband's mother hails from well known industrial family. Further, it is not denied by both parties that from the date of marriage, the revision petitioner in Crl.R.C.No.152 of 2015/wife is residing in the above mentioned house viz., Door No.348, Pantheon Road, Egmore, Chennai.

11. In this case, admittedly, the revision petitioner in Crl.R.C.No.152 of 2015/wife has filed the petition under Section 12 of the Act. As far as Section 12 of the Act is concerned, the proceedings is summary in nature. If the petitioner/wife is able to prove prima facie case of domestic violence, she is entitled for the Protection Order, Residential Order and Monetary Order. As far as the domestic violence is concerned, though it is explained in Section 2 (g), but it adumbrated in detail in Section 3 of the Act.

12. Section 3 of the Domestic Violence Act deals with "domestic violence" and reads as under:-

"3. Definition of domestic violence.—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."

13. Since the Domestic Violence Act is a special Act enacted to give immediate and interim relief to the women, who suffered Domestic Violence, but in the Act itself there is enabling provisions to the Courts to follow their procedure and to give the relief to the petitioner as per law. Hence, as per Section 12 of the Act, the aggrieved person must prove prima facie Domestic Violence caused to her.

14. In this case, it is useful to refer Section 125 of Cr.P.C. which reads as follows:-

"125. Order for maintenance of wives, children and parents.- (1) If any person leaving sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the maintenance of a minor female child referred to in

clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation.- For the purposes of this Chapter,-

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

[(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made;

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance from her husband under this section she is living in adultery, or if, without any sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to, live with her, husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

15. In this case, admittedly, the marriage between the either parties is still subsisting and divorce was not granted by the competent Court. Further, it is not denied on the side of the revision petitioner/husband that he had filed a petition for divorce and subsequently, since he has not pursued the petition, the divorce petition was dismissed for default. In the above circumstances, since the marriage between the parties is still subsisting, the revision petitioner/husband is liable to pay maintenance to his wife. Further, in this case, it is not the case of the revision petitioner/husband that he and his wife were living separately by mutual consent. It is not the case of the revision petitioner/husband that there are no documents adduced on that point also. Further, there is no proof that the respondent/wife is living in adultery with other person. Further, on perusal of the records, it is clear that the revision petitioner/husband is living with one lady by name Susaana. Admittedly, the revision petitioner in CrI.R.C.No.152 of 2015/wife is residing in the house Door No.348, Pantheon Road, Egmore, Chennai. Subsequently, the husband went to

abroad for some time. Subsequently also, he was living in the house Door No.348 Pantheon Road, Egmore, Chennai, which is the parental house of the revision petitioner/husband. Hence, the revision petitioner/husband alone residing in the separate place.

16. In view of the above circumstances, this Court is of the considered view that since the revision petitioner/husband is living with some other lady, the respondent/wife has sufficient reason to live separately. Even as per Section 125 of Cr.P.C, the respondent/wife is eligible for maintenance. Hence, the argument of the learned Senior Counsel appearing for the revision petitioner/husband that the trial Court and the First Appellate Court, without any basis and without following the principles prescribed under Section 125 of Cr.P.C., awarded maintenance to the wife is not at all acceptable and that argument is liable to be rejected. Further, it is admitted by both parties that the revision petitioner/husband is the son of the Former Inspector General of Police, who is a respectable citizen in the Tamil Nadu and also the respondent/wife is also hails from the rich industrial family and after their marriage, they were living in fast locality in a big house.

17. Considering the status of the revision petitioner in CrI.R.C.No.1252 of 2014/husband and also considering the status of the respondent/wife, the trial Court and the First Appellate Court, correctly passed orders fixing the quantum of maintenance amount. Further, it is an admitted case of the respondent/wife that she was working as a Journalist and subsequently, she was working in NDTV and earning Rs.20,000/- per month. Even though the respondent/wife is earning Rs.20,000/- per month, according to her status and also the status of her husband, it is not enough to live the life. Hence, the First Appellate Court, considering the above facts and circumstances of the case, fixed a sum of Rs.1,00,000/- per month towards maintenance. Hence, the argument of the learned Senior Counsel appearing for the petitioner/husband that since the respondent/wife is earning and having independent source of income, maintenance should not be granted to the respondent/wife is not at all acceptable and that argument is also liable to be rejected.

18. In this case, admittedly, the respondent/wife was working as Air Hostess with British Airways. Subsequently, she resigned her job and worked as Managing Director of the company. She is also very well in the Journalism. Subsequently, she worked in NDTV. In view of the above status and the education of the respondent/wife, she is a competent person to run a business and since she is a Journalist, the argument of the learned counsel for the respondent/wife that she was simply signing the documents as Managing Director and she acted only according to the direction of the revision petitioner/husband is not at all acceptable. Hence, the

argument of the learned Senior Counsel appearing for the revision petitioner in Crl.R.C.No.1252 of 2014/husband that since cases were filed under Section 138 of the Negotiable Instruments Act and also a case was filed before the Debts Recovery Tribunal against the wife, she is not entitled for any damages is acceptable. The learned counsel for the respondent in Crl.R.C.No.1252 of 2014/wife would submit that the wife was forced to take the job in NDTV. Hence, the learned Magistrate awarded a sum of Rs.50 lakhs towards compensation for that. On perusal of records, it is seen that Previous to the marriage, the respondent/wife was working as Air Hostess with British Airways and subsequently, she was working as Managing Director and thereafter, she taken the job in NDTV with her consent alone. Hence, the argument of the learned counsel for the respondent in Crl.R.C.No.1252 of 2014/wife that the wife was forced to take the job in NDTV is not at all acceptable. Hence, a sum of Rs.50 lakhs awarded to the wife by the learned Magistrate is not sustainable. The revision petitioner/husband is living with another woman by name Susaana. In this case, admittedly, the respondent/wife was working as Managing Director. Since both the petitioner and the respondent are living separately, they were not separated by any Court order. Previous to the application, the respondent/wife has not taken any steps to join with her husband by filing a petition for restitution of conjugal rights.

19. Hence, this Court is of the considered view that the First Appellate Court rightly rejected the claim of the respondent/wife and set aside the order of the trial Court and disallowed the compensation of Rs.3 Crores under Section 22 of the Act. Considering the facts and circumstances of the case, this Court is of the considered view that the respondent/wife is entitled for compensation and since their marriage is still subsisting, the husband is duty to maintain his wife and also duty to provide a house for her living equally to the status of the husband.

20. In this case, the First Appellate Court/IV Additional Sessions Judge, City Civil Court, Chennai, after considering the entire facts and circumstances of the case, correctly came to a conclusion and directed the revision petitioner in Crl.R.C.No.1252 of 2014/husband to pay Rs.75,000/- per month towards rent for the respondent/wife and further directed the revision petitioner/husband to pay Rs.1,00,000/- towards maintenance to the respondent/wife from the date of filing of the petition under the Act. Hence, this Court is of the considered view that there is no illegality or infirmity in the order passed by the First Appellate Court. This Court finds no reason to interfere with the judgment passed by the First Appellate Court and hence, the revision preferred by both the parties are liable to be dismissed.

21. In the result, both the criminal revision cases are dismissed by confirming the order dated 30.10.2014 passed by the learned IV Additional Sessions Judge, City Civil Court, Chennai, in C.A.No.137 of 2011. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VI)

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Sub Asst. Registrar

To

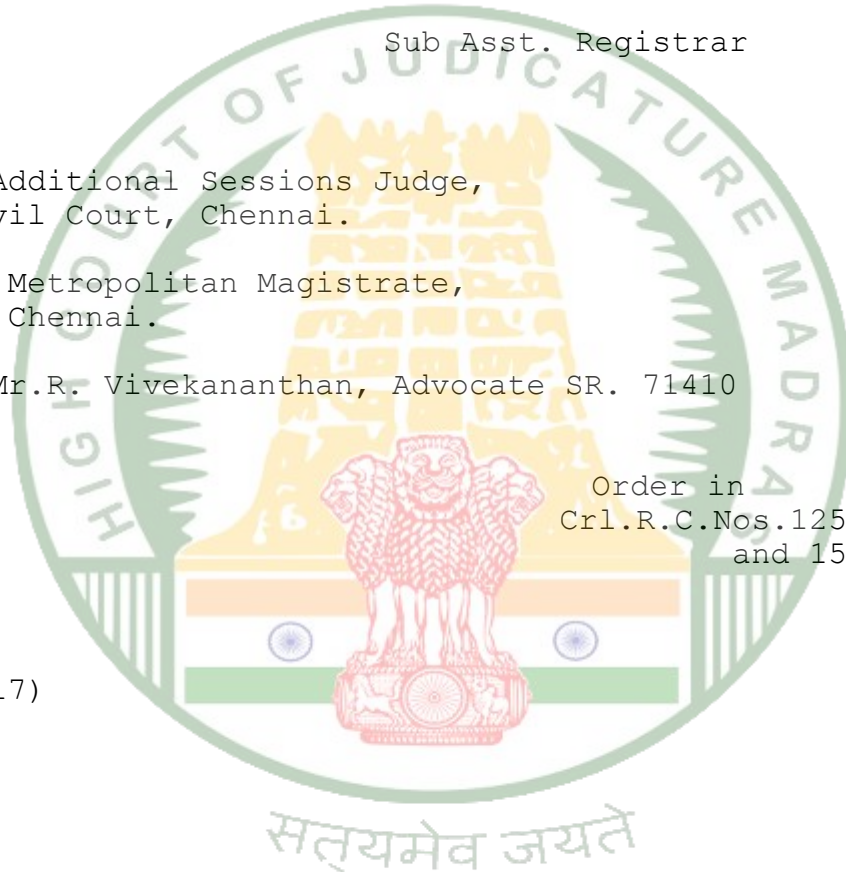
1.The IV Additional Sessions Judge,
City Civil Court, Chennai.

2.The XIV Metropolitan Magistrate,
Egmore, Chennai.

+3ccs to Mr.R. Vivekananthan, Advocate SR. 71410

Order in
Crl.R.C.Nos.1252 of 2014
and 152 of 2015

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