

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.10.2016

(Orders Reserved on : 21.06.2016)

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.R.C.No.1126 of 2015

and

M.P.No.1 of 2015

Mohammed Akber .. Petitioner/Respondent

Vs.

Sajia Fathima .. Respondent/Complainant

Prayer :- Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C., against the order dated 01.09.2014 passed in Crl.M.P.No.1192 of 2014 in C.C.No.84 of 2014 on the file of the learned V Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.H.Manivannan

For Respondent : Mr.S.R.Rajagopal

ORDER

This criminal revision case is directed against the order dated 01.09.2014 passed by the learned V Metropolitan Magistrate, Egmore, Chennai, in Crl.M.P.No.1192 of 2014 in C.C.No.84 of 2014.

2. The brief facts of the case are as follows:-

In this case, the respondent herein/complainant has filed a complaint under the Protection of Women from Domestic Violence Act before the learned V Metropolitan Magistrate, Egmore, Chennai, and the case was taken on file as C.C.No.84 of 2014. It is admitted by both parties that the marriage between the respondent/complainant and the son of the revision petitioner was solemnized on 30.04.2011. Subsequently, Crl.M.P.No.360 of 2014 was filed by the respondent herein/complainant before the trial Court and the right of shared household was allowed by the learned Magistrate to the respondent herein. The revision petitioner has filed a petition in Crl.M.P.No.1192 of 2014 to modify the order passed in Crl.M.P.No.360 of 2014.

3. The learned counsel for the petitioner would mainly contend that the trial Court, without considering the facts and circumstances of the case, erroneously dismissed the petition filed by the petitioner in CrI.M.P.No.1192 of 2014 in C.C.No.84 of 2014. Even according to Section 2 (a) of the Protection of Women from Domestic Violence Act, the property of the mother-in-law of the complainant will not come under the category of shared household. It is further contended that the Court below has failed to consider the above fact and erroneously dismissed the petition filed by the petitioner and hence, the learned counsel prayed that the order of the trial Court has to be set aside and the criminal revision case has to be allowed.

4. The learned counsel for the respondent would contend that the trial Court, after considering the entire facts and circumstances of the case, dismissed the petition filed by the petitioner and there is no infirmity or illegality in the order passed by the trial Court and hence, he prayed that the Criminal Revision Case has to be dismissed. It is further contended that the modification petition filed by the petitioner was dismissed and the said order was passed under the Domestic Violence Act. Hence, as against the order passed by the learned V Metropolitan Magistrate, Egmore, Chennai, is appealable before the Court of Sessions under Section 29 of the Protection of Women from Domestic Violence Act. Even though appeal remedy is available to the petitioner, without availing the appeal remedy, straightaway the petitioner has filed the criminal revision and the same is not at all maintainable. Hence, the Criminal Revision Case has to be dismissed.

5. In the above said circumstances, it is useful to extract Section 29 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the said Act) which reads as follows :-

"29. Appeal.- There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later."

6. On a reading of Section 29 of the said Act, it is made clear that if a person is aggrieved by the order of the Magistrate, he has to prefer an appeal before the Court of Sessions. In this case, aggrieved over the order passed by the learned V Metropolitan Magistrate, Egmore, Chennai, the present criminal revision case is preferred by the petitioner. The revision petitioner has every right to prefer an appeal before the Court of Sessions, but without following the above said

procedure, the petitioner, straightaway, filed the criminal revision case before this Court which is not at all maintainable and therefore, the criminal revision case is liable to be dismissed.

7. In the result, the Criminal Revision Case is dismissed with liberty to the petitioner to prefer an appeal before the appropriate Court according to law. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The V Metropolitan Magistrate,
Egmore, Chennai.

2.The Public Prosecutor,
High Court Madras.

+1cc to Mr.S.R.Raja Gopal, Advocate Sr.57904

+1cc to Mr.H.Manivannan, Advocate Sr.58371

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srg 24/10/2016

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