

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Cr1.R.C.No.1179 of 2015

and

M.P.No.1 of 2015

A.Suresh Anto

... Petitioner

Vs.

Anto Teena Mary

.... Respondent

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of the Code of Criminal Procedure, praying to allow this criminal revision by setting aside the order dated 27.08.2015 passed by the learned XVI Additional Sessions Judge, Chennai, in C.A.No.169 of 2012 on his file and direct that the original petition in M.P.No.114 of 2012 in M.P.No.59 of 2012 in C.C.No.1854 of 2012 on the file of the learned X Metropolitan Magistrate, Egmore, Chennai, and direct the learned Magistrate to take up M.P.No.114 of 2012 for enquiry in C.C.No.1854 of 2012.

For Petitioner : Mr.M.Rajavelu

For Respondent : Mr.M.Baskaran

ORDER

This Criminal Revision Case is filed by the petitioner praying to allow this criminal revision by setting aside the order dated 27.08.2015 passed by the learned XVI Additional Sessions Judge, Chennai, in C.A.No.169 of 2012 and direct the learned X Metropolitan Magistrate, Egmore, Chennai, to take up M.P.No.114 of 2012 for enquiry in C.C.No.1854 of 2012.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

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

(i) The respondent as a complainant filed a petition in M.P.No.59 of 2012 under Section 12 of the Protection of Women from Domestic Violence Act, 2005, (hereinafter referred to as the Act) seeking interim relief of Residence Order and monetary Reliefs per month under Section 23(3) of the Act.

The learned X Metropolitan Magistrate, Egmore, Chennai, after

hearing the petitioner and after perusing the petition, has passed an order on 14.05.2012 which reads as follows:-

"1. The respondents 2 to 4 stay away from the petitioner to prohibit violence against her.

2. The respondents are ordered not to disturb the petitioner from the Shared house at 268/11, Udhayam Colony, Anna Nagar South, Chennai and the 2 to 4th respondents are not to enter the portion of the shared house hold in which the petitioner reside.

3. The 1st respondent is directed to pay Rs.3000/- for food, clothes, medications and other purpose, to pay Rs.1000/- for Basic necessities, for household expense Rs.2000/-, totally Rs.6000/- per month as monetary Relief till the disposal of the main petition.

4. The Inspector of Police, V5 Thirumangalam is hereby directed to give protection and all the other averments, petitioner's contention can be considered in the Main enquiry of the petition and after completion of enquiry."

(ii) As against the said order passed by the learned X Metropolitan Magistrate, Egmore, Chennai, the petitioner herein and the respondents in M.P.No.59 of 2012 have filed a petition in M.P.No.114 of 2012 before the learned X Metropolitan Magistrate, Egmore, Chennai, seeking to set aside the Ex-parte interim order passed in M.P.No.59 of 2012 in C.C.No.1854 of 2012. The learned X Metropolitan Magistrate, after hearing both parties, dismissed the said petition on 24.08.2012 and the said order reads as follows:-

"Heard and perused the petition and contentions, Argument and Notice filed by the petitioner/respondent in C.C.No.1854 of 2012. The other allegations of the petitioner is to be tried in the Main trial. The petitioner filed this petition to set aside the interim order passed by the Court. The other side argued this petition is not maintainable in Law and facts. The petitioner is ordered for only interim maintenance and the respondent can raise all the fact in the Trial. Hence, at this stage this petition is Dismissed as not maintainable in Domestic Violence Act."

(iii) As against the said order passed by the learned X Metropolitan Magistrate, Egmore, Chennai, in M.P.No.114 of 2012 in M.P.No.59 of 2012, the petitioner herein has preferred an appeal in CrI.A.No.169 of 2012 before the learned XVI Additional Sessions Judge, Chennai, and the learned Judge, after hearing both parties, dismissed the said criminal appeal confirming the order passed in M.P.No.114 of 2012 in M.P.No.59 of 2012 in C.C.No.1854 of 2012, by the learned X Metropolitan

Magistrate, Egmore, Chennai. As against the dismissal order passed by the learned XVI Additional Sessions Judge, Chennai, in C.A.No.169 of 2012, the present criminal revision case is preferred by the petitioner before this Court.

4. The learned counsel appearing for the petitioner would contend that the learned X Metropolitan Magistrate, Egmore, Chennai, without hearing the respondents in M.P.No.59 of 2012, has passed the ex-parte interim order on 14.05.2012 in the said petition and therefore, the respondents therein have filed a petition in M.P.No.114 of 2012 in M.P.No.59 of 2012 seeking to set aside the said ex-parte order. But the learned X Metropolitan Magistrate, Egmore, Chennai, without hearing the arguments of the petitioner herein, had erroneously dismissed the petition in M.P.No.114 of 2012 as not maintainable. Further, the learned XVI Additional Sessions Judge, Chennai, also, without considering the facts stated in the criminal appeal, had dismissed the criminal appeal filed by the petitioner. Hence, the learned counsel for the petitioner prayed that the order passed by the learned XVI Additional Sessions Judge, Chennai, may be set aside and M.P.No.114 of 2012 may be allowed.

5. Per contra, the learned counsel appearing for the respondent would vehemently contend that in the cases filed under Protection of Women From Domestic Violence Act, 2005, the learned Magistrate has power to pass interim and ex-parte orders and there is no provision available in the said Act to set aside the order passed by the learned Magistrate under Section 23 of the Act. Hence, the learned X Metropolitan Magistrate, Egmore, Chennai, has correctly dismissed the petition filed by the petitioner for setting aside the ex-parte interim order passed in M.P.No.59 of 2012. There is no illegality or infirmity in the order passed by both the Courts below and hence, the learned counsel prayed that the Criminal Revision Case may be dismissed.

6. On a perusal of the entire papers, it is seen that M.P.No.59 of 2012 was filed by the respondent herein seeking for the interim relief of residence order and monetary reliefs per month under Section 23(3) of the Domestic Violence Act. The learned X Metropolitan Magistrate, Egmore, Chennai, in his order, has specifically stated as follows:-

"Peruse the application filed by the petitioner. In view of the urgency of the petitioner's petition, after perusing the petition, at this stage, it is ordered"

7. Hence, the above said order passed on 14.05.2012 is only an interim order. While passing the interim order, there is no necessity to send notice to other side and hearing the other side is not at all necessary. In the above

circumstances, it is useful to extract Section 23 of the Protection of Women From Domestic Violence Act, 2005 which reads as follows:-

"23. Power to grant interim and ex parte orders.- (1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or as the case may be, section 22 against the respondent.

This clause provides for grant of interim orders by the Magistrate. He may also pass ex parte orders on the basis of affidavits given by the aggrieved person."

8. On a reading of the above said provision, it is clear that the Magistrate has power to pass an interim order or ex-parte order as the case may be. Hence, the order passed by the learned X Metropolitan Magistrate, Egmore, Chennai, under Section 23(3) of the Domestic Violence Act is perfectly valid and it is acceptable. Further, on a perusal of the entire provision of the Domestic Violence Act, it is seen that there is no provision available to set aside the interim order or ex-parte order passed under Section 23 of the Act. While passing interim order or ex-parte order, the only provision available is under Section 25 of the Act which reads as follows:-

"25. Duration and alteration of orders.- (1) A protection order made under Section 18 shall be in force till the aggrieved person applies for discharge.

(2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate."

9. On a reading of the above provision, it is clear that if at all any person aggrieved by the interim order passed by the learned Magistrate, either the petitioner or the respondent, has to apply for alteration or modification or

revocation of the order made under the said Act or has to prefer an appeal under Section 29 of the Act.

10. In this case, the petitioner has not filed any petition before the learned X Metropolitan Magistrate, Egmore, Chennai, seeking for modification, or alteration or revocation of the order by the learned Magistrate. The petitioner simply filed a petition in M.P.No.114 of 2012 seeking to set aside the ex-parte interim order passed by the learned Magistrate in M.P.No.59 of 2012. Since there is no provision available in the Domestic Violence Act, to set aside the ex-parte interim order, the learned X Metropolitan Magistrate, Egmore, Chennai, has correctly dismissed the petition as not maintainable. Admittedly, the petitioner has every right to prefer an appeal against the order passed by the learned Magistrate in M.P.No.59 of 2012. It is also an admitted fact that the present petitioner has not preferred any appeal against the order passed in M.P.No.59 of 2012 and simply filed a petition in M.P.No.114 of 2012 seeking to set aside the ex-parte interim order which provision is not available in the Domestic Violence Act.

11. In view of the above facts and circumstances of the case, there is no infirmity or illegality in the order passed by both the Courts below and hence, the criminal revision case is liable to be dismissed.

12. In the result, this Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Jr1

To

1. The XVI Additional Sessions Judge,
Chennai.

2. The X Metropolitan Magistrate,
Egmore, Chennai.

+1cc to Mr.N.Baskaran, Advocate, S.R.No.35224

Cr1.R.C.No.1179 of 2015

PPA (CO)
CA(04/07/2016)