

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-02-2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

Crl.R.C.No.271 of 2016 and
Crl.M.P.No.1873 of 2016

P.Kalpana

.. Petitioner

Vs.

1 R.Saravanan @ Arumugam
2 R.Vijayalakshmi
3 Yasodha
4 S.Mariappan
5 Mani @ Devamanokari
6 M.Senthilmurugan
7 G.Arumugam
8 Veni @ Krishnaveni

.. Respondents

This Criminal revision is filed under Section 397 of Cr.P.C., to set aside the order passed in M.C.No.2 of 2015 dated 02.02.2016 on the file of the Chief Judicial Magistrate, Erode.

For Petitioner : Mr.C.Prakasam

O R D E R

This revision has been preferred under section 397 Cr.P.C. by the wife of Saravanan/ first respondent and also against certain others who are related to the petitioner by her marriage to the first respondent.

2 Petitioner/wife instituted M.C.No.2 of 2015 before the learned Chief Judicial Magistrate, Erode seeking several reliefs under the Protection of Women from Domestic Violence Act, 2005 (hereinafter called 'D.V.Act'). It was dismissed by the learned Chief Judicial Magistrate, Erode on 02.02.2016.

3 Aggrieved, instead of filing an appeal to the next appellate Court, she preferred this revision.

4 The question is whether this revision can be entertained when the appeal remedy is provided under Section 29 of the D.V. Act.

5 The learned counsel for the revision petitioner would submit that the learned Chief Judicial Magistrate, Erode dismissed the Maintenance case by an erroneous order throwing open the rudimentary principles relating to domestic problems. In passing the impugned order, the salient provisions of D.V. Act has not been adverted to and the order lacks non observance of general basic principles of law. In such circumstances, the learned counsel for the petitioner would submit that the petitioner has directed this revision under Section 397 Cr.P.C. questioning the legality and propriety of the order. In such circumstances, under section 397 Cr.P.C., this Court has jurisdiction to revise the impugned order.

6 Now, let us see Section 29 of D.V. Act, 2005 which runs as under:

"29. Appeal:

There shall lie an appeal to the Court of Sessions 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".

7 In this connection, it is apposite here to notice Section 372 of Cr.P.C. which runs as under:

"Section 372 - No appeal to lie unless otherwise provided:

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force".

8 Appeal is a creation of statute. Right of appeal should be statutorily conferred. It is intended to give a further hearing to a party. It gives an opportunity for further adjudication. It is one more avenue to the aggrieved party to take the issue to the appellate Court for its scrutiny of the orders passed by the Court below. The right of appeal is not a matter of assumption or presumption. It is a statutory remedy.

9 In this perspective, if we look at the provisions of Section 372 of Cr.P.C. according to which no appeal shall lie unless, otherwise provided under the Code of Criminal Procedure, 1973 or any other law.

10 In so far as problems between spouses, the D.V. Act has been enacted to provide various reliefs to the wives, children, etc. as against committing domestic violence. As against any order passed under the D.V. Act, appeal is provided under Section 29 of the said Act which we have already noticed. A combined reading of Section 29 of the D.V. Act and Section 372 Cr.P.C. would clearly show that as against any order passed under D.V. Act, an appeal shall lie to the Court of Sessions.

11 As per the Code of Criminal Procedure, 1973 a Judicial I Class Magistrate becomes Chief Judicial Magistrate/Chief Metropolitan Magistrate/Additional Metropolitan Magistrate. Though Chief Judicial Magistrate is having supervisory power over the Judicial Magistrates, he is also a Magistrate. Thus, an order passed by the Chief Judicial Magistrate under D.V. Act will be an order passed by a Magistrate within the meaning of Section 29 of the said Act and it is subject to the appeal remedy provided in Section 29 of the D.V. Act.

12 Pursuing a course of appeal remedy should be as per the statutory provisions. In such circumstances, the revision petitioner has to pursue the remedy provided under Section 29 of the D.V. Act, 2005 namely, Court of Sessions, Erode.

13. In the result, this Criminal revision is not maintainable in this Court. Consequently, connected miscellaneous petition is closed. Registry is directed to return the original papers to the petitioner. Petitioner is given 30 days time from the date of receipt of papers from the Registry to file an appeal under Section 29 of The Protection of Women from Domestic Violence Act, 2005 before the competent Court.

सत्यमेव जयते
Sd/-

Asst.Registrar (CO)

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Sub Asst. Registrar

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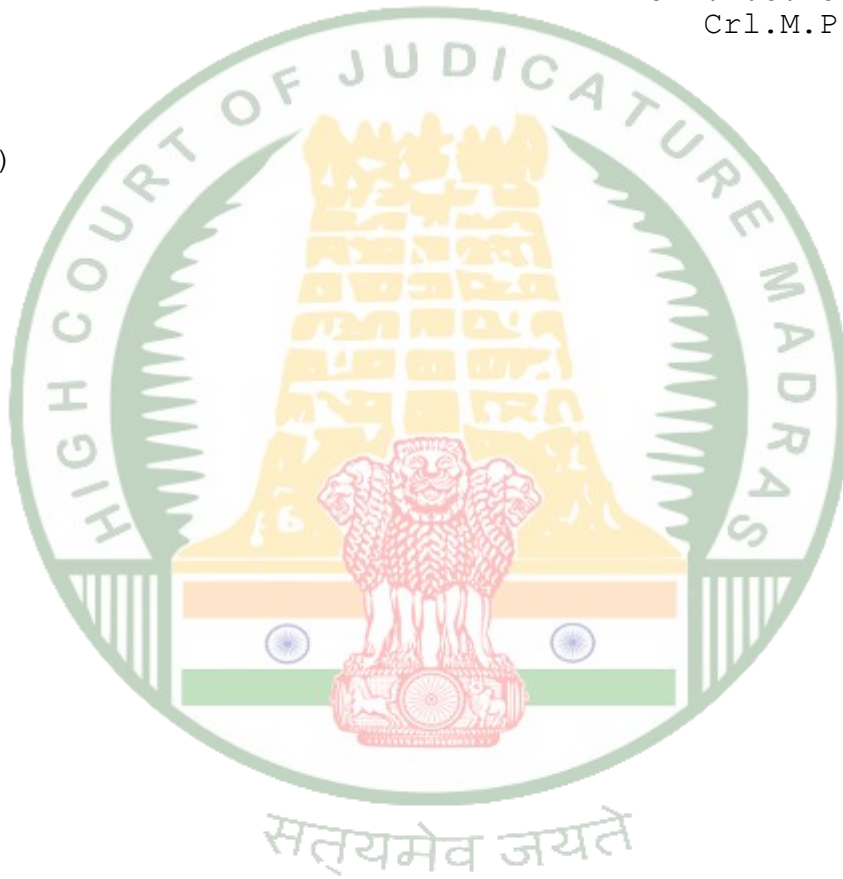
1.The Chief Judicial Magistrate,
Erode

2.The Public Prosecutor,
High Court,
Madras.

1 cc to Mr.C. Prakasam, Advocate, sr. 12793

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