

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

CrI.R.C.No.709 of 2016

and

CrI.M.P.No.5119 of 2016

G.Sengodan Petitioner/Respondent

Vs.

S.Sasikala Respondent/Petitioner

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of the Code of Criminal Procedure, against the order dated 12.01.2016 passed by the learned Judicial Magistrate, Additional Mahila Court, Salem, in C.M.P.No.3435 of 2015 in Domestic Violence Case No.56 of 2015.

For Petitioner : Mr.S.A.Rajan
For Respondent : Mr.C.Prabakaran

ORDER

This Criminal Revision Case is directed against the order dated 12.01.2016 passed by the learned Judicial Magistrate, Additional Mahila Court, Salem, in C.M.P.No.3435 of 2015 in Domestic Violence Case No.56 of 2015.

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

3. The learned counsel appearing for the petitioner would contend that the respondent/wife has filed a petition before the learned Judicial Magistrate, Additional Mahila Court, Salem, in C.M.P.No.3435 of 2015 in Domestic Violence Case No.56 of 2015, under Section 23 of the Domestic Violence Act against the petitioner/husband. The learned Magistrate, after hearing both parties, partly allowed the said petition and directed the petitioner/husband to pay a sum of Rs.10,000/- to the respondent/wife as interim maintenance allowance to maintain

herself and her son. It is further contended by the learned counsel for the petitioner that the learned Magistrate, without considering the counter statement filed by the petitioner/husband to prove his case and without considering the documents produced to prove the income of the petitioner, had erroneously passed the order granting interim maintenance and hence, the order passed by the learned Judicial Magistrate, Additional Mahila Court, Salem, may be set aside and the Criminal Revision Case may be allowed.

4. The learned counsel appearing for the respondent would contend that the learned Magistrate, after analysing the entire evidence and documents produced by the parties, came to a correct conclusion and awarded interim maintenance to the respondent/wife and her child and hence, the learned counsel prayed that the criminal revision case may be dismissed.

5. In this case, the learned Judicial Magistrate, Additional Mahila Court, Salem, has passed the order on 12.01.2016 granting interim maintenance on the petition filed under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the said Act). It is useful to extract Section 23 of the said Act.

"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."

6. Further, in this case, the order passed by the learned Judicial Magistrate, Additional Mahila Court, Salem, is appealable under Section 29 of 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.

This clause provides that an appeal from the order made by the Magistrate shall lie to the Court of Session within thirty days from the date of service of the order on the aggrieved person or the respondent, whichever is later."

7. 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, as against the order passed by the learned Judicial Magistrate, Additional Mahila Court, Salem, instead of preferring an appeal, the petitioner has preferred the present criminal revision case before this Court and hence, the criminal revision case is liable to be dismissed.

8. 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.

-s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

To

The Judicial Magistrate,
Additional Mahila Court,
Salem.

+1 cc to Mr.S.A.Rajan Advocate sr.36241

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