

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.R.C.No.809 of 2016
and Crl.MP.Nos.6032 and 6033 of 2016

Dr.T.Rajasekaran

.. Petitioner/Accused

Vs.

The Protection Officer,
Domestic Violence Act,
District Social Welfare Officer,
District Collectors Office Complex,
Singaravalar Maligai, 8th floor,
Chennai-1.

2.Dr.R.Poonguzhali

.. Respondents/Defacto Complainant

Prayer :- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 18.03.2016 made in Crl.MP.No.1336 of 2016 in CC.No.2463 of 2015 passed by the learned 10th Metropolitan Magistrate, Egmore @ Allikulam, Chennai.

For Petitioner : Dr.A.Thigarajan, SC
for Mr.S.Ramesh Kumar

For Respondents : Mr.M.Mohammed Riyaz GA
(Crl. side) for R1.
Mr.R.John Sathyan
for M/s.R.Poornima for R2.

ORDER

The Criminal revision is directed against the order passed by the learned 10th Metropolitan Magistrate, Egmore @ Allikulam, Chennai made in Crl.MP.No.1336 of 2016 in CC.No.2463 of 2015 dated 18.03.2016, dismissing the discharge application filed under Section 238 Cr.PC.

2.It is admitted by both sides, CC.No.2463 of 2015 is pending on the file of the X Metropolitan Magistrate, Egmore @ Allikulam, Chennai for the offences under Section 9(b) read with

37(2)(e) of the Protection of Women from Domestic Violence Act, 2005.

3. The learned counsel for the petitioner would mainly contend that the trial Court without appreciating the facts erroneously dismissed the discharge application filed by the revision petitioner. In this case, the pleadings are artificial, imaginary and has no logic, without any legal basis filed the present application as per Rule 17(3), there is no facts placed by the second respondent attracting to grant medical facilities to the second respondent. The learned trial Court failed to consider the second respondent filed OP.No.3877 of 2013, in which no such allegations of Domestic Violence Act was pleaded, the complaint was made after 19 years without mentioning any specific date, month, year etc., therefore, the allegations are afterthought and has no basis at all to sustain the allegations. The trial Court after admitting the material facts, the trial Court ought to have allowed the discharge petition, but erroneously dismissed the petition filed by the petitioner. Hence, the order of the trial Court has to be set aside and the petitioner has to be discharged from the offences.

4. The learned counsel for the second respondent mainly contended that there is no specific fault in the Domestic Violence Act and filed revision before this Court. But the present revision is preferred by the revision petitioner without invoking section 29 of the Domestic Violence Act. The revision petitioner has every right to prefer an appeal before the Sessions Judge of the concerned District. The question of appreciation of evidence cannot be decided at the discharge stage. The trial Court after appreciating the entire facts and circumstances of the case, dismissed the petition and there is no illegality or infirmity in the order of the trial Court and the learned counsel prays for dismissal of the revision petition.

5. Heard the rival submissions made on both sides and perused the records.

6. It is useful to extract the paragraphs 10 and 11 of the grounds for revision filed by the petitioner before this Court, which reads as follows :-

10. The petitioner states that the complaint filed by the respondent dated 05.01.2015 narrating the allegations from the date of marriage namely 29.05.1996 only after the petitioner filing divorce OP would show that the complaint was made after 19 years without any specific date, month, year etc therefore the allegation is an afterthought, motivated, vindictive and has no basis at all to sustain the

allegations, which the learned Magistrate failed to address on the issue and no finding was recorded.

11.The learned Magistrate ought to have consider the facts that allegations demanding dowry and sexual harassment does not arise in view of the fact that both of them got married out of their wish and the same was love marriage. The allegations are self destructive as could be seen from the plain reading of the complaint.

7.On reading of the allegations levelled against the present petitioner in the complaint, whether it is basis or not has to be decided at the time of trial after adducing evidence on either side. At this stage, it cannot be decided whether it is baseless or not. At this stage, it cannot be decided whether there is no basis for complaint and relevant date, month, year etc., has not been mentioned and there is no logic on the above said complaint. The above allegations cannot be decided at the present stage.

8.In the above said circumstances, it is useful to extract Section 29 of the Protection of Women from Domestic Violence Act, 2005 which read 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."

9.In view of the above circumstances, if the petitioner is aggrieved by the order passed by the X Metropolitan Magistrate, Egmore @ Allikulam, Chennai he has to prefer appeal under Section 29 of the Domestic Violence Act. The revision petitioner has every right to prefer an appeal before the Sessions Judge of the concerned District. The present CC.No.2463 of 2015 is filed under Section 37(2)(e) of the Domestic Violence Act. The revision petitioner filed petition under Section 239 Cr.PC to discharge him from the charges in CC.No.2463 of 2015. If the petitioner is aggrieved over the order of the learned X Metropolitan Magistrate, Egmore @ Allikulam, Chennai he has to prefer an appeal before the concerned Court and without following the above said procedure, the petitioner, straightaway, filed the revision petition before this Court which is not at all maintainable and the revision is liable to be dismissed.

10.In the result, the criminal revision petition stands dismissed, with liberty to the petitioner to approach the

competent court in accordance with law. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The X Metropolitan Magistrate, Egmore @ Allikulam, Chennai.

2. Do Thro The Chief Metropolitan Magistrate,
Egmore, Chennai.

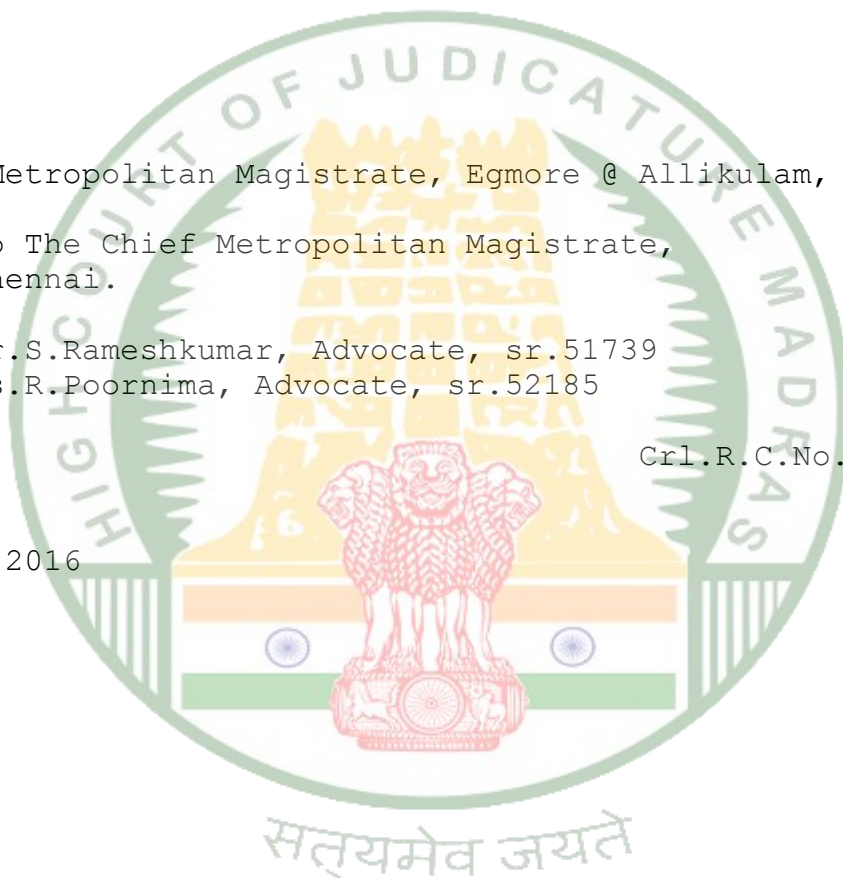
1 cc to Mr.S.Rameshkumar, Advocate, sr.51739

1 cc to Ms.R.Poornima, Advocate, sr.52185

Cr1.R.C.No.809 of 2016

gj co

kra 27.09.2016



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