

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders Reserved on : 29.07.2016)

DATED : 26.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.821 of 2016
and
Crl.M.P.No.6193 of 2016

1. M.Sylender
2. L.Muthukumarasamy
3. M.Oormila Petitioners/Appellants/
Respondents

Vs.

1. Protection Officer,
District Social Welfare Office,
Vellore,
N.A.District.
2. G.Durga Respondents/Respondents/
Petitioners

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of the Code of Criminal Procedure, to set aside the order of the Principal District and Sessions Judge, Vellore, dated 18.04.2016 in Crl.A.(Nil)/2016, direct the District Judge to number the appeal filed against the order dated 02.12.2015 passed by the Judicial Magistrate No.I, Tirupathur, Vellore District, in M.C.No.22 of 2015 and dispose of the same in accordance with law.

For Petitioners : Mr.S.Kalyanaraman

For R-1 : Mr.M.Mohamed Riyaz,
Government Advocate (Crl.Side)

For R-2 : Mr.G.Vinodhkumar

ORDER

This Criminal Revision Case is directed against the order dated 18.04.2016 passed by the learned Principal Sessions Judge, Vellore, Vellore District, in Criminal Appeal (Nil)/2016.

2. In this case, on the complaint given by the second respondent herein viz., Durga, the case was taken on file by the learned Judicial Magistrate No.I, Tirupattur, Vellore District, under Sections 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act on 02.12.2015, in M.C.No.22 of 2015 and the learned Magistrate ordered to issue summons to respondents 1 to 3 therein/revision petitioners herein and posted the case on 08.01.2016. As against the said order, the respondents 1 to 3 therein/revision petitioners herein have filed an appeal before the District and Sessions Court, Vellore, and the learned Principal Sessions Judge, Vellore, without numbering the appeal, dismissed the same as not maintainable on 18.04.2016. As against the said order, the present Criminal Revision Case is preferred by the revision petitioners before this Court.

3. The learned counsel for the revision petitioners would contend that the First Appellate Court is erred in holding that the appeal is not maintainable and dismissing the appeal on that ground. It is further contended that the First Appellate Court has failed to appreciate the fact that as per Section 29 of the Protection of Women from Domestic Violence Act 2005, there shall be an appeal to the Court of Sessions within 30 days of which the order made by the Magistrate is served on the aggrieved person or the respondent as the case may be and therefore the appeal is maintainable. The learned counsel for the revision petitioners further contended that the First Appellate Court, without considering the above facts, had erroneously passed an order dismissing the appeal preferred by the revision petitioners and hence, the order passed by the First Appellate Court has to be set aside and the Criminal Revision Case has to be allowed.

4. Heard the submissions made by the learned Government Advocate (Crl.Side) appearing for the first respondent and the learned counsel appearing for the second respondent and perused the records.

5. In this case, it is useful to refer 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. Further, in this case, on a perusal of the entire records, it is seen that the learned Magistrate taken the case on file under Sections 18, 19, 20 and 22 of the Protection of the said Act and issued notice to the respondents. As against the said order, an appeal was preferred by the revision

petitioners before the Principal District and Sessions Court, Vellore.

7. As per Section 29 of the said Act, 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 No.I, Tirupattur, the revision petitioners hrerein have preferred an appeal before the Principal District and Sessions Court, but the learned Principal Sessions Judge, Vellore, without numbering the appeal, dismissed the same as not maintainable and hence, the order passed by the First Appellate Court is liable to be set aside.

8. In the result, this Criminal Revision Case is allowed and the order passed by the learned Principal Sessions Judge, Vellore, Vellore District, in Criminal Appeal (Nil)/2016, dated 18.04.2016, is set aside and the matter is remitted back to the First Appellate Court for disposal according to law. The learned Principal Sessions Judge, Vellore, is directed to take the appeal on file, number the same and dispose it on merits, according to law. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Jrl

To

1. The Principal District and Sessions Judge, Vellore.
2. The Judicial Magistrate No.I, Tirupathur, Vellore District.
3. Do Through The Chief Judicial Magistrate, Vellore.
4. The Public Prosecutor, High Court, Madras.

+lcc to Mr.G.Vinodhkumar, Advocate, S.R.No.61260
+lcc to Mr.S.Kalyanaraman, Advocate, S.R.No.61486(12.01.2017)

Cr1.R.C.No.821 of 2016

CA(CO)
CA(09/12/2016)

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