

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.862 of 2016

and

Crl.M.P.No.6599 of 2016

G.Krishnamoorthi Petitioner/Respondent

Vs.

Kavitha Respondent/Petitioner

Prayer: Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure, against the order dated 19.11.2015 passed in Crl.A.No.64 of 2014 on the file of the learned Principal District and Sessions Judge, Vellore, Vellore District, in modifying the order dated 02.05.2014 made in M.C.No.06 of 2008, on the file of the learned Judicial Magistrate No.1, Vellore, Vellore District.

For Petitioner : Mr.A.Gouthaman
For Respondent : No Appearance

ORDER

This Criminal Revision Case is directed against the order dated 19.11.2015 passed in Crl.A.No.64 of 2014 by the learned Principal District and Sessions Judge, Vellore, Vellore District, in modifying the order dated 02.05.2014 made in M.C.No.06 of 2008, on the file of the learned Judicial Magistrate No.1, Vellore, Vellore District.

2. It is admitted by both sides that the respondent herein is the wife of the revision petitioner and their marriage was solemnized on 05.09.2005 as per the Hindu Rites and Customs and out of their wedlock, they have blessed with one female child.

3. The learned counsel for the petitioner would mainly contend that the respondent herein had filed an application in M.C.No.06 of 2008 before the learned Judicial Magistrate No.1, Vellore, under Sections 18, 19, 20 and 22 of the Domestic Violence Act and the trial Court, after hearing both sides, allowed the said application and directed the revision petitioner herein to pay a sum of Rs.5,000/- towards monthly maintenance to the respondent herein/wife and a sum of Rs.5,000/- towards monthly maintenance to her child, and also directed the revision petitioner to pay a sum of Rs.20,000/- towards advance amount for the rented house and further directed the revision petitioner to pay a sum of Rs.5,00,000/- as compensation to the respondent herein. As against the said order, the revision petitioner had preferred an appeal before the learned Principal District and Sessions Court, Vellore, Vellore District, in Crl.A.No.64 of 2014. The learned Principal District and Sessions Judge, after hearing both the parties, modified the order passed by the trial Court as follows:-

"The respondent and her daughter are entitled to live along with the appellant's house and thereby, the appellant is directed to make arrangement for the respondent's residence in his house. If the respondent refused to live along with the appellant at the appellant's house, then the appellant is liable to pay a sum of Rs.5,000/- towards maintenance as well as her residential purpose and further the appellant is liable to pay a sum of Rs.2,00,000/- towards compensation for the cause of mental agony and for her daughter's marriage expenses."

4. Against the above said modification order passed by the learned Principal District and Sessions Judge, Vellore, the present criminal revision case is preferred by the revision petitioner/husband. The learned counsel for the petitioner would further contend that the revision petitioner is working as a teacher and receiving a consolidated salary of Rs.7,000/- per month and he is incapable of paying a sum of Rs.2,00,000/- towards compensation and also a sum of Rs.5,000/- towards maintenance to the respondent herein and to her daughter. The revision petitioner has no permanent income and he has no property and further he is earning just Rs.7,000/- per month. Since the amount is very excessive, the revision petitioner is not able to pay a sum of Rs.2,00,000/- and Rs.5,000/- to the respondent as ordered by the Appellate Court. Hence, the orders passed by both the Courts below have to be set aside and the criminal revision case has to be allowed.

5. Even though notice was served on the respondent, she has not chosen to appear either in person or through counsel.

6. In this case, on a reading of the entire order of the Courts below, this Court finds that the respondent herein/wife has produced the documents viz., Marriage Invitation dated 05.09.2009; Birth Certificate of the daughter of the respondent dated 30.06.2006; Medical Report of the respondent/wife dated 21.11.2007 and also the compromise petition given by the respondent before the All Women Police Station dated 30.11.2007 and the said documents are marked as Ex.P.1 to P.4 respectively. Except the above four documents, there is no other document produced on the side of the petitioner therein/wife to show the income of the revision petitioner/husband. In the Appellate Court also, no document was produced on either side. In this case, the learned counsel for the petitioner would mainly contend that the revision petitioner is working as a part time teacher and getting a salary of Rs.5,000/-, subsequently, it was enhanced to Rs.7,000/- per month. Except the above income, the revision petitioner has no other income and no other property or no source of income. To disprove the said fact, there was no other material produced on the side of the respondent herein/wife.

7. In view of the above fact that since there was no valid evidence adduced on either side, the First Appellate Court fixed a sum of Rs.2,00,000/- towards compensation for the cause of mental agony to the respondent herein and to her daughter's marriage. For fixing the amount of Rs.2,00,000/-, there is no material available. Hence, without application of mind, the First Appellate Court fixed the lump sum amount of Rs.2,00,000/-. Further, the learned counsel for the revision petitioner stated that the petitioner is getting the consolidated monthly income of Rs.7,000/-. In view of the above facts and circumstances of the case, the orders of the Courts below are liable to be set aside.

8. In the result, the Criminal Revision Case is allowed and the orders passed by both the Courts below are set aside and the matter is remitted back to the learned Judicial Magistrate No.I, Vellore. The learned Judicial Magistrate No.I, Vellore, is directed to give an opportunity to both parties to adduce oral and documentary evidence and dispose the case strictly according to law. The connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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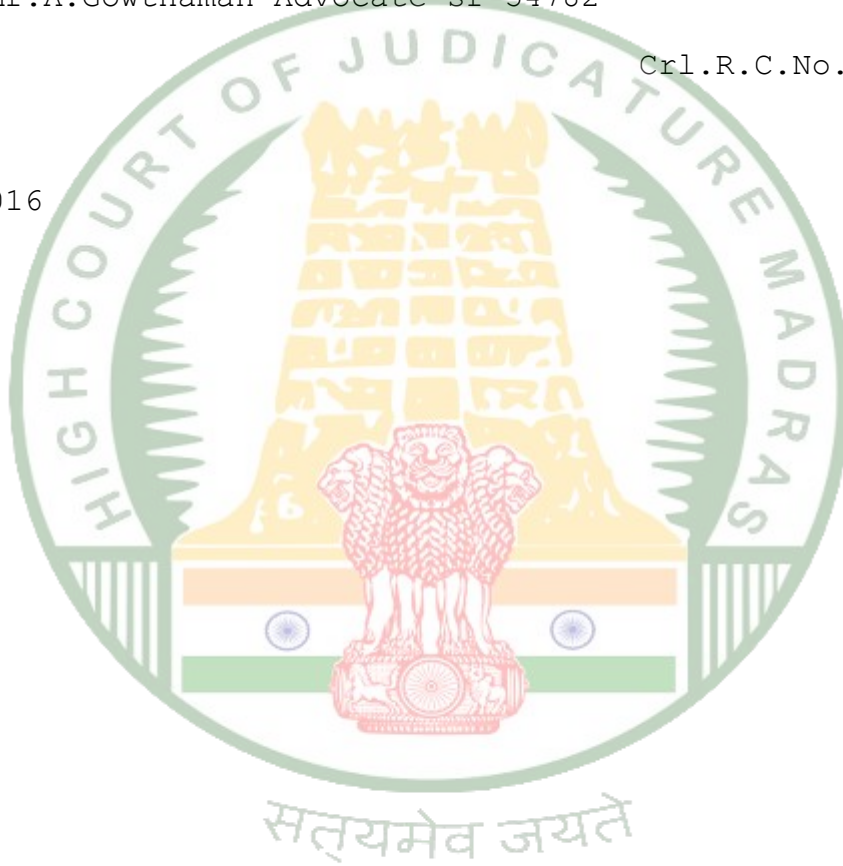
To

1. The Principal District and Sessions Judge,
Vellore, Vellore District.
2. The Judicial Magistrate No.1, Vellore,
Vellore District.
3. -do- Thro'The Chief Judicial Magistrate
Vellore

+1 cc to Mr.A.Gowthaman Advocate sr 54782

Cr1.R.C.No.862 of 2016

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