

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2016

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Cr1.O.P.NO.25823 of 2009
and M.P.No.1 of 2009

1. K.Mohansundaram
2. Karuppannan
3. Kamala
4. Dharani

... Petitioners

Vs.

1. M.Roopasankari
2. Minor Roopendran
rep. by 1st respondent

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the entire records relating to the order dated 10.09.2009 in CMP No.3546 of 2009 on the file of the Judicial Magistrate No.4, Salem, quash the same.

For Petitioner : Mr.D.Shivakumaran
For Respondents : No appearance (notice served)

O R D E R

The petitioners have come forward with this Criminal Original Petition seeking to quash the order dated 10.09.2009 passed in CMP No.3546 of 2009 on the file of the Judicial Magistrate No.IV, Salem,

2. The learned counsel for the petitioners has submitted that by way of an interim order, the learned Judge has granted the relief that there should not be any harassment and that a sum of Rs.4,000/- will have to be paid every month as maintenance, apart from giving right of residence in one portion of the residential house of the petitioners, which is in the nature of a final order. Hence, the same has to be quashed.

3. This Court heard the submissions made on the learned counsel for the petitioners and perused the materials available on record.

4. As against the interim order impugned in this Criminal Original Petition, the petitioners have got a right of appeal. In similar circumstances, the Madurai Bench of this Court by an order dated 15.12.2015 in CrI.O.P.(MD) SR.Nos.37594 and 37595 of 2015 has dismissed the petition at the SR stage itself, when the petitioner therein approached this Court without availing appellate remedy. Relevant portion of the said order would read thus:

"5. If the petitioner is really aggrieved by the award of maintenance, he has to pursue his remedy before the Appellate Forum and it is for the Appellate Court to decide the issue in one way or the other after considering the evidence and materials placed before it. Hence, this Criminal Original Petition, which is in SR stage is dismissed as not maintainable".

5. Section 29 of the Protection of Women from Domestic Violence Act, 2005 is very clear that the aggrieved person has got the right to file an appeal to the Court of Sessions from the order made by the Magistrate. The said provision of the Act is extracted below:

"29. Appeal: There shall lie an appeal to the Court of Session within thirty days from the date on which the order by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later".

6. In view of the same, this Court is not inclined to grant the relief sought by the petitioners. Hence, this Criminal Original Petition is dismissed. However, It is open to the petitioners to challenge the order impugned before the Appellate Court, if so advised. It is made clear that the period during which this petition is pending shall be excluded for the purpose of limitation, if the appeal is filed. On such filing, the same shall be taken up for hearing on a day-to-day basis and the matter shall not be adjourned beyond three working days, at any point of time on receipt of notice by the respondents and a decision shall be taken, as expeditiously as possible. Connected miscellaneous petition is also dismissed.

rg/aeb

s/d-
Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

To

The Judicial Magistrate No.IV,
Salem

+ 1 cc to M/s.D.Shivakumaran, Advocate SR 8340

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