

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-07-2017

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

CRL.RC.No.71 of 2015
and M.P.No.1 of 2015

Manoj Kumar Gangawal

...Petitioner

-Vs-

Ashakavita Jain

...Respondent

Criminal Revision Petition is filed under Section 397 read with Section 401 of Cr.P.C. to set aside the order passed by the learned Judicial Magistrate No.II, Puducherry, dated 20.02.2014 in Cr.M.P.No.821 of 2014 in M.C.No.2 of 2014.

For Petitioner : Mr.D.Senthil Kumar

For Respondent : Mr.S.Vimal

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ORDER

This Criminal Revision Case has been filed against the interim order passed by the learned Judicial Magistrate No.II at Puducherry in Cr.M.P.No.821 of 2014 in M.C.No.2 of 2014 dated 20.02.2014.

2.By the said order, the learned Magistrate has given a direction to the petitioner, who was the respondent in the said Maintenance Case, to pay a sum of Rs.15,000/- per month to the petitioner until further orders.

3.Despite service of notice, the respondent, who is the petitioner herein, had not chosen to appear before the trial Court on the date of hearing.

4.Since the said order which is impugned herein is the *ex parte* order, on that ground the same is being assailed by the petitioner before this Court in the present Revision.

5.Heard Mr.Mr.D.Senthil Kumar, learned counsel appearing for the petitioner and Mr.S.Vimal, learned counsel appearing for the respondent.

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6.Mr.S.Vimal, learned counsel appearing for the respondent has raised a preliminary objection as to the maintainability of the Revision itself. According to him, the order impugned is an order passed under Section 20 read with 23(2) of the Protection of Women from Domestic Violence Act, 2005, (herein

after referred to as the Act). Such orders are appealable under Section 29 of the Act before the Court of Sessions only. Therefore, the learned Counsel appearing for the respondent would submit that without filing a statutory appeal as provided under the provisions of the Act, the petitioner has chosen to approach this Court by way of the present Revision, which according to him, is not maintainable and this Court could not entertain the same.

7. Since this preliminary objection has been raised, this Court is inclined to examine the same and to decide the point on the said issue itself as a preliminary issue.

8. In support of his contention, the learned counsel appearing for the respondent has relied upon the Judgment of this Court reported in **(2013) 2 MLJ (CrI) 406** in the matter of ***K.Rajendran and another v. Ambikavathy and another***. The learned counsel appearing for the respondent would invite the attention of this Court to Paras 46 and 47 of the said Judgment cited supra which reads thus:

46. As far as the present case is concerned, as against the impugned order dated 21.09.2012 passed in D.V.O.P.No.29 of 2012, the Revision Petitioners are to prefer only Statutory

Appeal as per Section 29 of the Act. It is a viable efficacious, effective and alternative remedy, as opined by this Court. In the instant case, obviously, the Petitioners have not filed any petition seeking alteration, modification or revocation of the order passed by the Learned Judicial Magistrate in D.V.O.P.No.29 of 2012 dated 21.09.2012 without seeking alteration, modification or revocation of the order so passed in D.V.O.P.No.29 of 2012 dated 02.09.2012 by the Learned Judicial Magistrate and also not filing the Statutory Appeal under Section 29 of the Act, the Petitioners have directly approached this Court by filing the instant Criminal Revision under Section 397 and Section 401 of Cr.P.C. Only when a Revision is filed as against the judgment or order passed by the Court of Session in Appeal as per Section 29 of the Act, then only, the right of availing the procedural facility of filing the Revision is available to the Petitioners, in the considered opinion of this Court. When a statutory right of filing an appeal is provided to the Petitioners (as per Section 29 of the Act) then this Court is of the

considered view that the Petitioners cannot invoke the Revisional Jurisdiction of this Court under Section 397 read with 401 of Cr.P.C.

47. In the result, it is held by this Court that the present Criminal Revision Petition filed by the Petitioners before this Court will not lie in the eye of Law. However, liberty is granted to the Petitioners to prefer a Statutory Appeal as per Section 29 of the Act before the Court of Session and to seek appropriate remedy, if they so desire/advised. It is open to the respective parties to raise all factual and legal pleas (even to place reliance on the citations/decisions/orders, which they rely upon before the Court of Session) when Appeal being filed by the aggrieved person. Consequently, connected miscellaneous petition is also dismissed."

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9. Based on the said submission of the learned counsel appearing for the respondent, I have given my anxious consideration as to the preliminary issue raised by him.

10. Under Section 20 of the Act, the concerned Jurisdiction Magistrate, while disposing of an application under Sub-section (1) of Section (12) of the Act, can direct the party to pay monetary relief to meet the expenses incurred and the losses suffered by the aggrieved person and the child of the aggrieved person.

11. Under Section 23 of the Act, the Magistrate would also have the power to pass interim orders on satisfaction of a *prima facie* case which discloses that the respondent is committing, or has committed an act of domestic violence or there is a likelihood that the respondent may commit an act of domestic violence. Sub Section 2 of the Section (23) of the Act further states that the Magistrate can even grant an *ex parte* order under that Section on the basis of the affidavit in such form as may be prescribed, of the aggrieved person under Sections 18, 19, 20, 21 and 22 of the Act.

12. In the case on hand, since the petitioner remained absent, the learned Magistrate by invoking the power under Sections 23 (1) and (2) read with Section 20 of the Act has passed the *ex parte* interim order, by which a direction was issued to the petitioner herein to pay a sum of Rs.15,000/- per month to the respondent.

13. Section 29 of the Act, reads thus:

"29. Appeal_ There shall lie an appeal to the Court of Session within 30 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."

14. Whatever order passed by the learned Magistrate under various provisions of the Act, can be appealed by the Court of Sessions within a period of 30 days. There is a clear statutory appealable remedy as provided under the Act itself. As rightly pointed out by the learned counsel appearing for the respondent, the petitioner cannot invoke the revisional jurisdiction of this Court.

15. Since the issue has already been considered by the Judgment of this Court, as cited supra, where the learned Judge has taken a similar view against the order passed by the learned Magistrate concerned under the Domestic Violence Act that no revision would lie before this Court against the order passed by the learned Magistrate concerned and only appeal would lie before the concerned Sessions Court. I am in agreement with the learned

Judge and follow the said dictum and also in view of the clear provision, especially Section 29 of the Act, I am of the firm view that this Revision cannot be entertained.

In the result, this Criminal Revision Case is dismissed as not maintainable. However, the petitioner is at liberty to approach the appropriate Appellate Court, if he is so advised, in the manner known to law within a period of two weeks from the date of receipt of a copy of this order. Once if any such appeal is filed by the petitioner, the same shall be entertained by the Court of Appeal concerned, without insisting upon the limitation period. Consequently, connected Miscellaneous Petition is closed.

04.07.2017

Internet: **Yes**
Index : yes/No

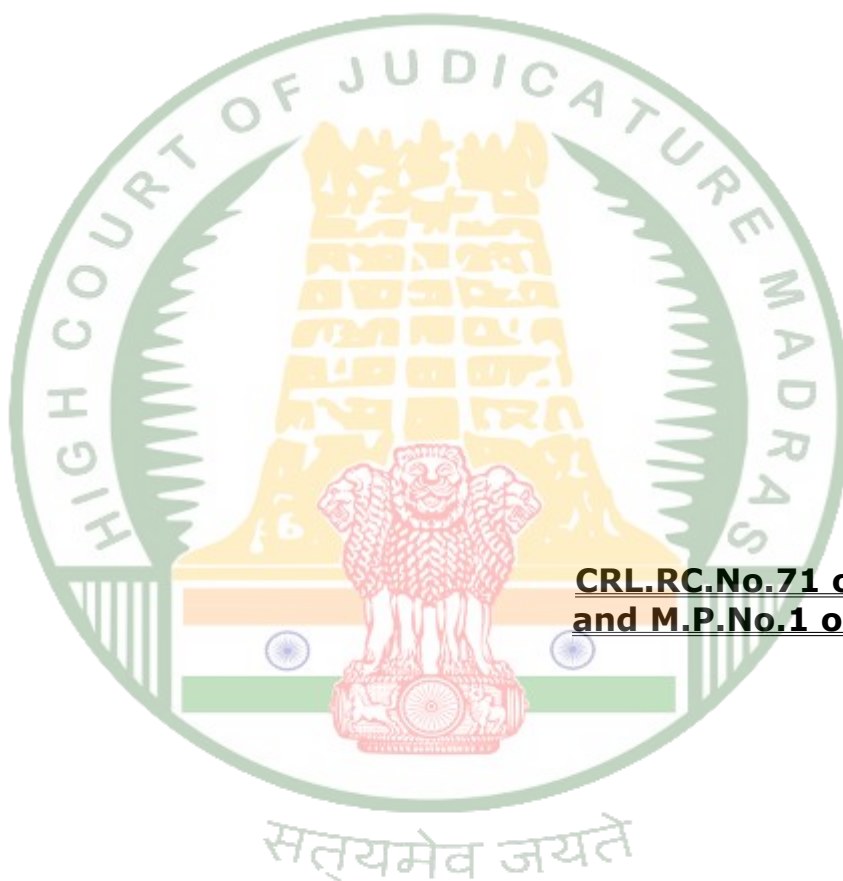
Note:

Registry is directed to return the Original impugned order to the learned counsel appearing for the petitioner forthwith.

mps/vv

R. SURESH KUMAR, J,

mps/vv



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