

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2017

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl. R.C.NO. 854 of 2015

Crl.M.P.No.1 & 2 of 2015

1. D.Anthoni Muthu D.Thangaraj
2. Juliet Ammal
3. L.James Petitioners

Vs.

Smt.Twinkle Amala Respondent

Prayer : Criminal Revision Petition filed under Section 397 read with 401 of Criminal Procedure Code, to set aside the judgment dated 09.07.2015 made in Criminal Application No.186 of 2014 against M.P.No.546 of 2014 in M.C.No.3848 of 2011, on the file of Hon'ble I Additional Sessions Court, City Civil Court, Chennai.

For Petitioners: Mrs.Auxilia Peter
For Respondent : Mr.Selvakumaraswami

ORDER

The respondent herein filed a petition under the Domestic Violence Act seeking various reliefs in M.C No.3848 of 2011 before the file of XVIII Metropolitan Magistrate Court, Saidapet, Chennai - 15. After commencement of trial, the respondent herein examined herself as PW1 and the petitioners have also partly cross examined her only in part.

Thereafter, the petitioner failed to co-operate with the trial but, the respondent was regularly appearing for trial before the court and participate in trial. In the above circumstances, the trial Court passed an order allowing the application, directing the petitioners not to commit any domestic violence upon the respondent and to pay a monthly maintenance of Rs.10,000/- (Rupees Ten Thousand Only) from the date of petition and also to return the jewels and other Stridhana articles to the respondent. Thereafter, the petitioners filed a petition in M.P.No.546 of 2011 before the trial court seeking to set aside the ex-parte order. That

application was dismissed by the trial court by order dated 11.06.2014. Challenging the same, the petitioners filed an appeal in Criminal Appeal No.186 of 2014 on the file of I Additional City Civil Court, Chennai. The Appellate Court also, considering the materials available on record and on merits, dismissed the appeal. Challenging the same, the present Criminal Revision petition has been filed by the petitioners.

2. Heard Mrs.Auxilia Peter, learned counsel for the petitioners and Mr.Selvakumaraswami, learned counsel appearing for the respondent.

3. The order dated 06.03.2014 in M.C.No.3848 of 2011 is not at all an ex-parte order and it is an order passed on merits. Since the petitioners herein did not appear for trial in M.C.No.3848 of 2011, the trial Court has passed an order on merits, thereby granting maintenance and return of jewels and other Stridhana articles. Hence, the only remedy available to the petitioners is to file an appeal under Section 29 of Protection of Women from Domestic Violence Act. But, without filing an appeal, the petitioners filed an application in M.P.No.546 of 2014 before the trial court, as the order passed in M.C.No.3848 of 2011 is an ex-parte order, which is not maintainable in law. Even as against the order passed in M.P. No.546 of 2014 also, the petitioners filed an appeal in C.A. No.186 of 2014 and the appeal was also dismissed. When the petitioners' application in M.P. No.546 of 2014 to set aside the ex-parte order itself was not maintainable in law before the trial court, they cannot maintain any appeal before appellate Court. Subsequently, they cannot maintain any Revision also before this Court. If at all there is any grievance in the order passed by the trial court, the only remedy available to the petitioners is to file appeal under Section 29 of Protection of Women from Domestic Violence Act. This Criminal Revision petition is therefore not maintainable in law.

4. In the result, the Criminal Revision Petition is dismissed as not maintainable. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

maya/mst

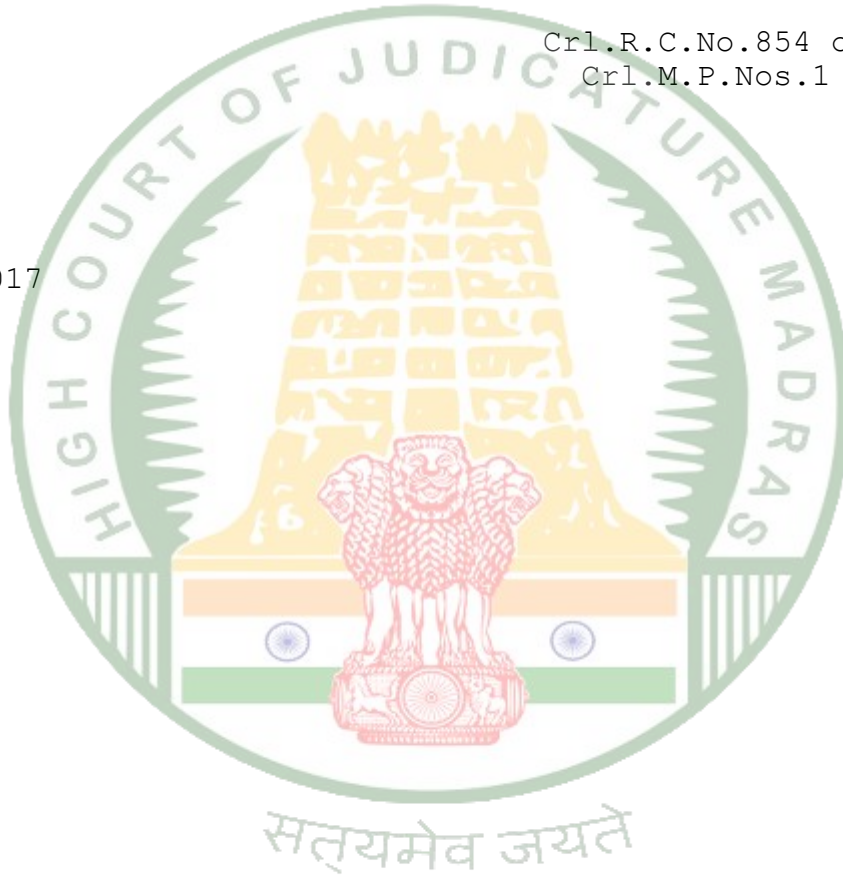
To

1. The I Additional Sessions Judge,
City Civil Court,
Chennai
2. XVIII The Metropolitan Magistrate,
Saidapet, Chennai-15.

+1 cc to M/s.Auxilia peter Advocate sr 45982
+1 cc to Mr.S.B.Viswanathan Advocate sr 45397

CrI.R.C.No.854 of 2015 and
CrI.M.P.Nos.1 & 2 of 2017

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