

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.09.2017

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

Crl.RC.Nos.1396 and 1399 of 2016 &
Crl.M.P Nos. 12216, 12217, 12243 & 12244/16

Komala .. Petitioner in both CrlRCs
Vs.

Satheeskumar ... Respondent in both CrlRCs

Prayer in Crl.RC.No. 1396 of 2016:Petition filed under Section 397 and 401 of Cr.P.C against the order dated 25.01.2016 in C.A.No.29 of 2014 on the file of II Additional Sessions Judge, Pondicherry conforming the order in MC.No.10 of 2014 dated 23.7.2014 on the file of Judicial Magistrate No.1, Puducherry.
Prayer in Crl.RC.No. 1399 of 2016:Petition filed under Section 397 and 401 of Cr.P.C against the order dated 25.01.2016 in C.A.No.27 of 2014 on the file of II Additional Sessions Judge, Pondicherry conforming the order in Crl.M.P.No.515(A) of 2013 in MC.No.10 of 2014 dated 23.7.2014 on the file of Judicial Magistrate No.1, Puducherry.

For Petitioner : Mr.M.Muruganantham

COMMON ORDER

These two criminal revision cases have been filed challenging the order passed by the first Appellate Court i.e., II Additional Sessions Judge at Pondicherry in Crl.A.Nos.29 of 2014 and 27 of 2014 by order dated 25.1.2016, respectively.

2. The very short facts which are required to be noticed for the purpose of disposal of these two revision cases are as follows:

(i) The petitioner / wife had filed petition against the respondent/ husband under the provisions of Protection of Women from Domestic Violence Act (in short, ' the Act') in M.C.No.10/2014 wherein by order dated 12.02.2014, the learned trial Court Judge, i.e., Judicial Magistrate No.1, Puducherry has passed an interim order under Section 23(1) and (2) r/w 17 and 19(1) (a) of the said Act. According to the said order, the

respondent shall pay a sum of Rs.8000/- per month to the petitioner until further orders and such payment shall be made on or before the 5th of every English calendar month.

(ii) The said order in fact had been passed by the trial Court as an ex parte order as the respondent / husband did not appear before the trial Court.

(iii) Pursuant to the said order, since the respondent has not come forward to comply with the order by making payment of Rs.8000/- per month towards interim maintenance, the petitioner has filed another application before the trial Court in the said maintenance case, i.e., M.C.No.10 of 2014 (had been wrongly mentioned as M.C.No.10 of 2013 in the order dated 12.2.2014). In the said petition, the trial Court by order dated 23.07.2014, has directed the employer of the respondent to attach the salary of the respondent as he had not complied with the order of the said trial Court as referred to above. But this time, order was passed after hearing both sides.

(iv) Aggrieved over the said two orders, i.e., the first Order of granting interim maintenance by order dated 12.2.2014 and the second order of attaching the salary of the respondent by order dated 23.7.2014, the respondent / husband preferred the aforesaid appeals i.e., CA.No.27 of 2014 and C.A.No.29 of 2014. The said two appeals vide separate orders had been disposed of by the first Appellate Court by order dated 25.01.2016.

(v) Insofar as CA.No.27 of 2014 pertaining to the order passed by the trial Court directing the respondent to pay a sum of Rs.8,000/- as interim maintenance is concerned, the lower Appellate Court Judge recorded his findings that the respondent / husband has come forward to pay a sum of Rs. 3,000/- per month, as his salary according to the salary certificate, was only Rs.13,000/- and also recorded the findings that, if at all the respondent / husband had any grievance over the orders of the trial Court, he can approach the trial Court by filing petition under Section 25(2) of the Act. After recording these findings, the learned Appellate Judge allowed C.A.No.27 of 2014 by the impugned order dated 25.01.2016, by directing the husband to file a petition before the trial Court. Against that order Crl.R.C.No.1399 of 2016 has been filed.

(vi) On the very same date, in another appeal i.e., C.A.No.29 of 2014, the learned Appellate Court Judge, in view of the allowing the other appeal, namely, C.A.No.27 of 2014, has also allowed this appeal by setting aside the order of the trial Court dated 23.07.2014. Against that order made by the first Appellate Court in CA.No.29 of 2014 dated 25.01.2016, Crl.R.C.No.1396 of 2016 has been filed.

3. Mr.M.Muruganantham, the learned counsel for the petitioner would submit that assuming that the respondent / husband is earning only Rs.13,000/-, since the petitioner / wife has to maintain herself and the said two children, a considerable amount out of the salary of the respondent / husband has to be paid to the petitioner towards maintenance.

4. Only considering these aspects, Rs.8000/- was directed to be paid by the orders of the trial Court. However, merely because the respondent has come forward before the first Appellate Court to state that he is willing to pay Rs.3000/- per month as maintenance towards the petitioner and the children, the first Appellate Court should not have accepted the said contention and thereby, the order of the first Appellate Court reversing the Judgment of the order of the trial Court, is unjustifiable.

5. The learned counsel appearing for the petitioner would also state, that the order impugned before the first Appellate Court in C.A.No.27 of 2014 has been wrongly typed as M.C.No.10 of 2013 instead of M.C.No.10 of 2014. This typographical error also had been shown as one of the main reason by the lower Appellate Court for allowing the respondent appeal. This cannot be a reason for an Appellate Court to allow the appeal and therefore, on that reason also, the order impugned is in infirmity and it has to be interfered with.

6. The learned counsel for the petitioner would also state that since the respondent has not complied with the order of the trial Court for granting interim maintenance, the subsequent order of attaching his salary was passed by the trial Court and therefore, the Appellate Court ought not to have found fault with the said order and therefore, setting aside of the said order and allowing the other appeal filed by the respondent, is also equally unsustainable and unjustifiable and therefore, both the Judgments of the first Appellate Court which are impugned herein in the above respective criminal Revision cases are to be interfered with.

7. Though notice has been served on the respondent and his name also was printed in the cause list on 08.09.2017, he did not appear and therefore, this Court directed to list this matter today with name and full address of the respondent. Accordingly, the respondent's name and full address has been shown in the cause list and when the case is called today, none appears for the respondent. Since the respondent after having received the notice has not chosen to appear before this Court, inspite of enough opportunity having been given to him, this Court has to proceed with this matter on merits.

8. I have considered the submissions made by the learned counsel for the petitioner and also perused the materials placed before this Court.

9. In respect of the first order passed by the trial Court, it was an ex parte order, where the respondent did not appear before the trial Court. However, in respect of the second order, he had appeared and after hearing him only the order was passed. If at all, the respondent had any grievance over the quantum of amount fixed by the trial Court towards interim maintenance that could have been stated before the trial Court atleast at the time of disposal of the second petition, whereby the salary of the respondent was directed to be attached. Since such attempt had not been taken by the respondent, the trial Court passed the second order.

10. When appeal filed before the first Appellate Court against such orders of the trial Court, the first Appellate Court, should have considered the capacity of the respondent and also the status of the petitioner. Admittedly, the petitioner is a legally wedded wife and she is having two children born out of the wedlock of the petitioner and the respondent and the minimum required sum for the survival of these three people ought to have been taken into account by the first Appellate Court.

11. However, the lower Appellate Court Judge has simply observed that the respondent / husband has come forward to pay Rs.3000/- per month and therefore, he can file a petition under Section 25(2) of the Act and accordingly, the appeal filed by him was allowed.

12. If at all the first Appellate Court has got impressed over the voluntary action on the part of the respondent / husband to pay a sum of Rs.3000/-, the first Appellate Court either should have arrived at a required minimum amount for survival of the petitioner and two children and accordingly, could have fixed the quantum, or by dismissing the said appeals, liberty could have been given to the respondent / husband to approach the trial Court without any proposal with salary certificate, so as to enable the trial Court to modify the order, if there is any change in circumstances, in this regard.

13. Though the learned Appellate Judge has quoted the provisions of Section 25(2) of the Act under which the respondent / husband was directed to approach the trial Court, on a perusal, this Court finds that an application can be filed under Section 25(2) of the Act only in respect of the orders passed under Section 18 of the said Act.

14. Here in the case in hand, the maintenance was directed to be paid by the orders of the trial Court only under Section 20 of the Act as only under provisions of Section 20(d), maintenance for the aggrieved person as well as her children, can be ordered. Therefore, the said drive as has been made by the Appellate Court in the orders impugned stating that the respondent / husband can approach the trial Court by filing an application under Section 25(2) of the Act, is also not a sound reason for allowing the appeal filed by the respondent.

15. Further, the learned Appellate Judge has also given another flimsy reason whereby he has stated, that M.C.No.10 of 2014 has been shown as 10 of 2013, therefore, the order of the trial Court, is wrong. If at all any typographical error occurred, the same can be very well rectified and for that reason, the order cannot be set aside. Therefore, looking from any angle, the orders impugned passed by the first Appellate Court setting aside the orders of the trial Court as referred to above, is not only unsustainable, but also improper and erroneous.

16. Therefore, this Court has no hesitation to hold that both the impugned orders in the respective criminal revision cases referred to above, are liable to be set aside. Accordingly, these orders are set aside.

17. Since the trial Court has granted the relief of interim maintenance to the petitioner by way of direction to the respondent / husband to pay a sum of Rs.8000/- per month towards the petitioner for herself and two children, this Court at this moment, is not inclined to interfere with the said quantum as fixed by the trial Court. However, if the respondent is aggrieved over the said quantum, he can very well approach the trial Court by filing a proper petition with documents / evidences including salary certificate and based on which, he can plead before the trial Court for modifying the order, only with regard to the quantum of interim maintenance fixed by the trial Court.

18. With these observations and directions, these criminal revision cases are allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional Sessions Judge,
Pondicherry

2. The Judicial Magistrate No.1,
Puducherry

+ 2 ccs to Mr. M. Muruganathan, Advocate Sr.66596, 66597

Crl.RC.Nos.1396 and 1399 of 2016

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EU(15/11/2017)



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