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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2017

(Orders Reserved on 02.12.2016)

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC (MD) No.567 of 2016
and
CRL MP (MD) No.7073 of 2016

Shankar : Petitioner/Appellant/
Petitioner/Respondent

Vs.

Shanthi : Respondent/Respondent/
Respondent/Complainant

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to set aside the order made in C.A.No.42 of 2015 by the Principal Sessions Judge, Dindigu, dated 05.04.2016 confirming the order made in Cr.M.P.No.4560 of 2014 in D.V.O.P.No.5 of 2015 by the Judicial Magistrate No.1, Dindigul, dated 11.06.2015.

For Petitioners : Mr.D.Venkatesh

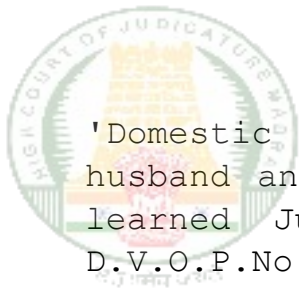
For Respondent : Mr.D.Selvaraj

ORDER

This Criminal Revision is filed praying to set aside the order made in C.A.No.42 of 2015 by the learned Principal Sessions Judge, Dindigu, dated 05.04.2016, confirming the order made in Cr.M.P.No.4560 of 2014 in D.V.O.P.No.5 of 2015, by the learned Judicial Magistrate No.1, Dindigul, dated 11.06.2015.

2. Brief facts, in nutshell, are as under :-

<https://hcservices.ecourts.gov.in/HCServices> (iv) The Revision Petitioner is the husband of the respondent herein. The respondent / wife filed a complaint on the basis of



'Domestic Incident Report' (DIR) against the Revision Petitioner / husband and it was taken on file as Cr.M.P.No.1129 of 2011 by the learned Judicial Magistrate No.1, Dindigul and is pending as D.V.O.P.No.5 of 2015 under the Domestic Violence Act.

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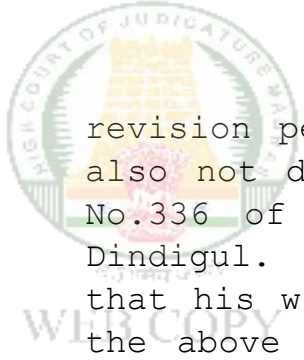
(ii) The Revision Petitioner filed a counter statement on 02.12.2011 and the said complaint was taken up for enquiry. The respondent has chosen to examine herself as P.W.1 and her brother as P.W.2. The Revision Petitioner / husband filed a petition on 21.08.2014 in Cr.M.P.No.4560 of 2014, seeking permission to file his additional counter after examination of P.Ws.1 and 2 on the side of the respondent/wife before the trial Court. The trial Court dismissed the above said petition on 11.06.2015 in which it is held that the petitioner / husband filed the impugned permission petition only after three years in order to delay the proceedings further.

(iii) Aggrieved by that order, the revision petitioner / husband filed an Appeal in C.A.No.42 of 2015 before the Principal District Court, Dindigul, which was also dismissed on 05.04.2016, after hearing both sides, confirming the order of the trial Court holding that the appellant is not entitled to discover new facts in this case, since he has not made such allegation in his main counter, but after three years from the date of filing the counter now he wanted to file the additional counter with some allegations about the character of his wife, which is noting but try to create new facts in this case.

(iv) Aggrieved by the order of dismissal of his appeal, the revision petitioner / husband preferred the present Revision before this Court contending that the petitioner wanted to elaborate his case, that too, during the time of enquiry by way of filing the additional counter and the said order of dismissal is not sustainable in law and hence, the order of dismissal is liable to be set aside.

3. Perused the materials on record and considered the rival submissions made by either counsels.

4. The relationship between the parties and also the children born out of their wedlock have not disputed in this case. A 'Domestic Incident Report' which was filed before the trial Court reveals the fact that the wife has pleaded that her husband is a violent person and has abused her conduct also. The above allegations are not specifically denied in the main counter statement filed by the



revision petitioner before the trial Court. The respondent has also not denied that her husband / revision petitioner filed HMOP No.336 of 2016 on 19.08.2014 on the file of the Family Court, Dindigul. During pendency of DVOP proceedings, by making allegation that his wife is living in adulterate life and in order to sustain the above allegation, the revision petitioner seeks permission to file additional counter alleging the above subsequent development in the proceedings. So it cannot be said that the revision petitioner has raised a new plea about the character of his wife, but it can be said that the petitioner has pleaded the subsequent development in the additional counter, after filing the main counter and also during the pendency of the Domestic Violence Proceedings. Whether the said allegations are not true or not true, has to be decided only during the trial.

5. It is also admitted that P.Ws. 1 and 2 are not yet cross-examined by the revision petitioner before the trial Court prior to filing of the impugned petition. The said subsequent development took place after filing his counter statement on 02.12.2011 in the said complaint. The impugned petition is filed seeking permission along with the additional counter on 21.08.2014, before the trial Court. However it is admitted that there is enormous delay in filing the petition. The said delay would be compensated by the revision petitioner to the complainant in terms of money. The respondent has sought relief under Sections 18, 19, 20, 21 and 22 of Domestic Violence Act, against her husband / revision petitioner.

6. Considering the above facts and circumstances of the case, this Court is inclined to permit the revision petitioner to file the additional counter regarding the alleged subsequent conduct and development after filing his counter statement to the pending complaint in the following terms:-

(a) This Criminal Revision is allowed by setting aside the order made in C.A.No.42 of 2015 by the learned Principal Sessions Judge, Dindigul, dated 05.04.2016, confirming the order made in Cr.M.P.No.4560 of 2014 in D.V.O.P.No.5 of 2015, by the learned Judicial Magistrate No.1, Dindigul, dated 11.06.2015.

(b) The trial Court is directed to receive the additional counter filed by the revision petitioner / husband on payment or deposit of Rs.2000/- (Rupees Two Thousand Only) to the complainant / wife, by the revision petitioner, within 10 days from the date on which the copy of the order is made ready.

(c) The trial Court is further directed to give 10 days time to the complainant/wife by giving an opportunity to reply to the additional counter and thereafter, to dispose the case on merits and



in accordance with law, within two months and report the same to this Court regarding the disposal of the case.

7. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CS-I)

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Dindigul.
2. The Judicial Magistrate No.1,
Dindigul,
3. The Record Keeper,
Vernacular Section
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.Venkatesh, Advocate, SR.No.3476
+1cc to Mr.D.Selvaraj, Advocate, SR.No.2989

**Pre-Delivery Order made in
Crl.RC(MD)No.567 of 2016
19.01.2017**

MPK

MKV-RR-BS/31.01.2017/4p-6c