

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:05.03.2018
CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.RC. No.1612 of 2017
in
Crl.M.P.Nos.16589 and 16590 of 2017

P.S.Sekar

... Petitioner

Vs.

1. S.Gowri
2. Minor. Prasanna
3. Minor.Thithiksha

(2 and 3 represented by mother and natural
guarding S.Gowri)

- 4.Rajeswari

.... Respondents

Prayer: The Criminal Revision Case has been filed under Sections 397 of Cr.P.C r/w.Sec.401 of Cr.P.C to call for the records from the file of the learned District and Sessions Judge, Thiruvellore in its Judgment in Crl.A. No. 28 of 2017 dated 09.10.2017 in confirming the order dated 18.07.2014 in M.C.No. 19 of 2014 of the learned Judicial Magistrate, Thiruvottiyur and set aside the same as erroneous, arbitrary, cryptic and unsustainable in law and on facts.

For Petitioner : Mr.Ar.M.Arunachalam

For Respondent : Mr.T.Murugamanickam, Senior Counsel
for Mr.P.V.Ravikumar

ORDER

This Criminal Revision Case has been filed to call for the records from the file of the learned District and Sessions Judge, Thiruvallur in its Judgment in Crl.A. No. 28 of 2017 dated 09.10.2017 in confirming the order dated 18.07.2014 passed in M.C.No. 19 of 2014 of the learned Judicial Magistrate, Thiruvottiyur and set aside the same.

2. The case of the the petitioner/ husband is that without giving opportunity, the learned Judicial Magistrate, Thiruvottiyur has passed an order in MC.No.19 of 2014 in which, the learned Magistrate has narrated the entire averments made in the complaint from paragraphs 1 to 6 and has passed the order in

paragraphs 7-8, which was challenged before the District Sessions Court, Thiruvallur and the same was confirmed however, made some modification in the order.

3. I have heard Mr.Ar.M.Arunachalam learned counsel appearing for the petitioner and Mr.T.Murugamanickam, learned Senior Counsel appearing for the respondent.

4. On perusal of the records produced by way of typed set of papers, in the order of the learned Magistrate, Thiruvottiyur made in MC No. 19 of 2014 dated 18.07.2014, it is made clear that the learned Magistrate had extracted the entire complaint which was filed by the respondent/wife in page Nos.1 to 6 and subsequently simply stated in para 7 of the order that the petitioner was examined as PW1 and Exhibits P1 to P 12 marked exparte evidence was taken and petition allowed.

5. Time and again, this Court and the Hon'ble Apex Court has very categorically held that even during the course of trial, while passing the orders whether ex-parte or on merits, the court must pass speaking orders. In this case the learned Magistrate himself has stated at the end of the order that the petitioner respondent/wife was examined as PW1 and exhibits P1 to P12 were marked and petition allowed. But there is no discussions about the said documents and also not given any description in the copy of the order about the contents of the documents. Therefore, it is made clear that the order itself was totally passed with total non-application of mind by the learned Magistrate which was also confirmed by the learned District Sessions Judge, Thiruvallur.

6. Therefore, in the interest of justice it is necessary to remand back this matter for fresh consideration by the learned Magistrate by giving fair opportunities both parties so as to examine the witness and mark the documents. At this juncture, the learned Senior Counsel appearing for the respondent/ wife stated that the petitioner himself has mentioned in the ground no.11 in the criminal revision petition which reads thus:

"xi. Further even with respect to the properties which were sought for attachment and order of injunction restraining alienation, it is stated that the said properties were the subject matter of agreements, even prior to filing of the maintenance claim petitioner and without affording the opportunity to the petitioner/ husband in appraising the said facts, the court below have passed an in-executable order".

7. Therefore, there is an apprehension that the said property will be alienated by the petitioner/husband. Hence, the learned Senior Counsel sought for protection to the respondent / wife and the two daughters till the disposal of the above M.C.No. 19 of 2014.

8. In the result, the order passed in M.C.No. 19 of 2014 is set aside and the matter is remand back to the learned Judicial Magistrate, Thiruvottiyur for fresh consideration by giving opportunity to both parties for adducing evidence and marking of documents and to pass orders on merits within a period of three months from the date of receipt of a copy of this order. It is made clear that case should be taken on day-to-day basis without any delay in disposing the case since the complaint is in the year of 2014 and both the parties are directed to give their full co-operation for earlier disposal of MC 19 of 2014 within the stipulated time fixed by this court.

9. The petitioner/ husband is directed not to alienate the properties mentioned below till the disposal of the above M.C.No. 19 of 2014.

i) No.A/63 Alagesa Nagar, Chengalpattu-603001 land measuring to extent of 9425 Sq.ft and building constructed therein compromised in Survey No. 296/3 T.S.No.29 and in any way interfere with the peaceful possession and enjoyment thereof.

ii) Sekar Talkies at door No.2, East 6, Kamala Street, Uthiramerur Village, Kancheepuram District measuring to extent of 67 cents compromising in survey Nos.878/103/878/286A and 578/286A1 along with machinery, equipment, furniture, electrical fittings, fixtures, fire extinguishers, pumps and other accessories therein"

10. Since this Court by an order dated 15.02.2018 had directed the petitioner to pay a sum of Rs.25,000/- as maintenance to respondent/ wife and to pay arrears of 50% at the rate of 25,000/- from 01.01.2017 to February 2018 to the respondent/ wife. The respondent/ husband also complied the order of this Court dated 15.02.2018 . The learned Magistrate shall also take into account the order passed by this Court on 15.02.2018 and in respect of the maintenance and decide the maintenance in accordance with law, without influencing any order passed by this Court in respect of maintenance and also alienation of the properties . If the learned Magistrate is

passing any order of maintenance in the MC No.19 of 2014 at the final stage, the maintenance amount already paid by this petitioner /husband as per the order of this court dated 15.02.2018 should be deducted. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

aav

To

1. The Principal District and Sessions Judge,
Thiruvallur.

2. The Judicial Magistrate,
Thiruvottiyur.

+2cc to Mr.P.V.Ravikumar, Advocate Sr.no.16736

+1cc to Mr.Ar.M.Arunachalam, Advocate sR.no.16741

KS(CO)
sm:20.3.2018

CRL.RC. No.1612 of 2017

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