

In the High Court of Judicature at Madras

Reserved on : 20.02.2018

Pronounced on : 09.04.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.87 of 2018

K.Gopika .. Petitioner/ Petitioner/
W/o.S.Srinivasaraja Complainant/ Aggrieved Person

Vs.

1.S.Srinivasa Raja
2.S.Jeyalakshmi
3.V.Muthu
4.Varadharajan .. Respondents/ Respondent

PRAYER: Criminal Revision is filed under Sections 397 and 401 of Cr.P.C., to call for the records pertaining to C.M.P.No.7214 of 2017 in D.V.No.25 of 2016 dated 06.01.2018, on the file of the learned Judicial Magistrate, Tambaram.

For Petitioner : P.K.Ganesh

For Respondents : Mr.AR.L.Sundaresan, Senior Counsel
for G.V.Sridharan (for R1 to R4)

O R D E R

The short facts of the case are as follows:-

The petitioner herein got married to the 1st Respondent on 12.01.2010 as per Hindu rites and customs. After the marriage, the spouses begin their matrimonial life at the residence of the 1st Respondent at Madurai along with her inlaws. Her marriage life was smooth till the death of her father in law in the year September, 2011. Thereafter, there was constant demand for dowry. The Petitioner underwent huge mental agony, verbal abuse from her husband and mother in law, the respondents 1 and 2 herein. All the Respondents used to ill tune the 1st Respondent to demand money Ten Lakhs from the father of the Petitioner for purchase of a residential flat in the name of the 1st Respondent. The Petitioner was inflicted with huge harassment for the same.

2.The Petitioner herein further stated that during 2013 the Petitioner was demanded a dowry and the parents of the petitioner satisfied their demand by providing 5 lakhs incurring huge debts beyond their level. That apart, the 1st respondent had also withdrawn Rs. 3 lakhs from the joint account of the petitioner. The 1st respondent got his job transferred from Coimbatore to Chennai in the year 2014 and the couple stayed in a house near the residence of the respondents 3 and 4. At the instigation of the 2nd Respondent, the respondents 3 and 4 harassed the petitioner. The Petitioner was beaten and till date she could not recover from the lower back pain. The Petitioner was never taken care by the 1st Respondent as a dutiful husband.

3.Further, the 1st Respondent is very much suspicious character used to doubt the petitioner. He used to dictate the Petitioner to wear dresses as seen in the movies and also committed sexual torture. The respondents suppressed the defect of impotency before the marriage. The 1st Respondent is an impotent and the same was confirmed by various clinical tests and in this regard, huge expenses were incurred by the parents of the petitioner however, there used to be no co operation by the 1st Respondent for the treatment. Unbearable by the constant harassment at the hands of the Respondents, the petitioner even tried suicide.

4.The Petitioner herein further stated that the respondents given continue life threat in the event of initiating any legal actions against them. In the worst stage, the petitioner revealed everything to her parents. The Petitioner was not made to live in peace even a single day and that the respondents used to abuse the petitioner in filthy languages and the petitioner's life was under peril. The 1st Respondent is a proved impotent person. He is the habit of consuming tablets to stimulate sexual activities upon the petitioner and thereby the physical condition of the Petitioner went to worst.

5.It is further stated by the Petitioner that the Petitioner was compelled to take up a job. Due to the health condition of the Petitioner she could not go for any job and for which also she was humiliated to a greater extent by pointing her as jobless by the respondents. The 1st Respondent working as sales executive in Pharma Company in the year 2010 and witnessed a good growth due to the support of the petitioner. The 1st Respondent made the Petitioner and her parents to spent huge money for IVF treatment but cunningly failed to attend the last stage process of the treatment. The Respondents with an malafide

intention of eliminating the petitioner from their family, used soothing words to send the petitioner to her parental home. After amicable talks when the Petitioner reentered her matrimonial home, she was forcefully driven out from the house for want of dowry and threatening from the 2nd Respondent that petitioner is not the only girl in the world and she would marry number of girls to her son. Finally, the Petitioner lodged a police complaint against the Respondents before the All Women Police Station, Tambaram vide CSR.No.455 of 2017 dated 07.07.2017 and investigation are pending. The Petitioner was tortured to the core both mentally and physically and she was inflicted to harassment and agony. On 05.07.2017 the petitioner was prevented from entering her shared household. Therefore, the petitioner has prayed for a direction to the respondents to provide her accommodation as towards Rent Rs.20,000/- p.m and Rs.25,000/- towards food, clothing, medicinal and other basic amenities and protection under Section 23 of the Protection of Women from Domestic Violence Act.

6.Before the trial Court, the 1st Respondent have entered appearance and filed the counter denying all the allegations of the petitioner except the marriage and the status as husband and wife. It is alleged that the claim for interim maintenance was ex-orbitant prays for dismissal. The 1st Respondent filed HMOP.No.620 of 2017 in the Sub-court, Tambaram for restitution of conjugal rites.

7.The learned Magistrate after hearing the arguments passed an order granting the relief under Section 23 of the Protection of Women from Domestic Violence Act, 2005 by directing the 1st Respondent to pay a sum of Rs.5,000/- p.m as interim maintenance from the date of petition.

8.The learned Magistrate observing that when the fact of marriage is admitted the respondent has to maintain his wife and therefore directed the respondent to pay a sum of Rs.5,000/- per month as interim maintenance to the Petitioner herein.

9.Aggrieved by the said order passed in CMP.No 7214 of 2017 in D.V.No.25 of 2016 on the file of the Judicial Magistrate, Tambaram, dated 06.01.2018, the above revision has been filed.

10.Mr.AR.L.Sundaresan, learned Senior Counsel argued that the petitioner is living comfortable at her parents house and that she does not require any monetary support from her husband the 1st Respondent herein. The Parties were called and appeared in which the 1st Respondent asserted that he is employed as Sales Manager in Pharma Industry and that he is earning around Rs.1,00,000/- p.m.

11.I heard Mr.P.K.Ganesh, learned counsel for the petitioner and Mr.AR.L.Sundaresan, learned Senior Counsel for Mr.G.V.Sridharan, learned counsel for the respondents and perused the entire records.

12.The learned counsel for the petitioner vehemently argued that the 1st respondent owns several properties at Madurai and Chennai and is receiving rental income from the properties. Further it was contended that the 1st Respondent is working as Sales Manager in Smith and Nephew, a UK based Company Pharma Company and earning a salary of more than Rs.95,000/- p.m. Further, the 1st Respondent obtained home Loans and Car loans and paying Rs.29,725/-p.m. to LIC Housing Finance from his salary. In support of the same, the Petitioner has filed the statement of accounts and provisional certificate pertaining to the home loans availed by the 1st Respondent in which it is evident that the income of the 1st Respondent is more than Rs.1,00,000/- p.m.

13.The learned Counsel for the Petitioner further argued that the petitioner being the aggrieved person and the wife of the 1st respondent is entitled to seek interim monetary relief under the Protection of Women from Domestic Violence Act, 2005, and Rules made thereunder. There is a specific provision under section 23 Protection of Women from Domestic Violence Act, 2005 enabling the Petitioner to provide accommodation and monetary relief.

14.On the above discussions, this Court considers that in the language of Section 23 of the Protection of Women from Domestic Violence Act, 2005, it is seen that:

23. Power to grant interim and ex parte orders.-

1. In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.
2. If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under Section 18, Section 19, Section 20, Section 21 or, as the case may be, Section 22 against the respondent.

15.On considering the factual matrix of the case, this Court is of the view that the petitioner is the aggrieved person approached the learned Judicial Magistrate, Tambaram by filing D.V.No.25 of 2016 against the Respondents. Whether or not the allegations of the petitioner alleging domestic violence can be decided only after a detailed trail. However, as far as the

present CMP is concerned, the Petitioner seeking interim orders under Section 23 of Protection of Women from Domestic Violence Act, 2005, the allegations should disclose a prima facie to grant reliefs. The 1st Respondent having admitted his income more than one Lakh without any denial, has a legal duty cast upon him to maintain his wife.

16.Further, on perusal of the papers filed by the Petitioner, it is very much seen that the 1st Respondent is paying a sum of Rs.29,725/- p.m. towards Home Loan. Further he also admits his income more than one Lakh. But on the other hand, the petitioner is a housewife presently at the care of her aged parents and undergoing severe ailments due to the harassment of the Respondents is not having any source of income to maintain herself. Power to grant relief under Section 23 of the Act, can be granted at any stage of the proceedings. The Magistrate may on an application being made by the aggrieved person, pass an ex-parte order directing the respondent to pay any interim monetary reliefs as prayed by the Petitioner if the circumstances warrants.

17.Hence this Court is of the view that having established a prima facie case, and there is no specific denial about the salary income by the 1st Respondent. Therefore it is just and proper to direct the 1st Respondent to pay a sum of Rs.15,000/- p.m. towards accommodation and Rs.15,000/- towards food, clothing, medical and other basis amenities of the Petitioner.

18. In the result,

a) the above Criminal Revision is allowed with the above directions. Consequently, the order passed in C.M.P.No.7124 of 2017 in D.V.No.25 of 2016 dated 06.01.2018 on the file of the Judicial Magistrate, Tambaram, is set aside;

b) the 1st respondent is directed to pay a sum of Rs.30,000/- as monthly maintenance to the petitioner from the date of filing the petition and continue to pay the same on or before 5th of every succeeding English Calendar month by way of demand draft or deposit in the petitioner's Bank Account;

c) the 1st respondent is directed to pay the arrears of interim maintenance amount from the date of filing the petition till date by way of demand draft to the petitioner within a period of two weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To:

1.The Judicial Magistrate, Tambaram.

2.The Chief Judicial Magistrate, Tambaram.

+2cc to Mr.G.V.Sridharan, Advocate, S.R.No.25892

+1cc to Mr.P.K.Ganesh, Advocate, S.R.No.26191 (28/04/2018)

Cr1.R.C.No.87 of 2018

PVS (CO)

RRK (25/04/2018)



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