



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.08.2018

DELIVERED ON : 28.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.RC.No.970 of 2011

and

M.P No.1 of 2011

1.Prakasam
2.Elumalai
3.Deivanayagi

... Petitioners/(Accused 1 to 3)

-vs-

P.Venkateswari

... Respondent/(Complainant)

PRAYER: Criminal Revision filed under Section 397 r/w.401 of Cr.P.C against the judgment dated 11.04.2011 made in CA No.163 of 2010 on the file of the Additional Sessions Court/Fast Track Court No.2, Gobichettypalayam confirming the judgment dated 16.11.2010 made in C.C.No.107 of 2010 on the file of the Judicial Magistrate Court No.2, Gobichettyapalayam

For Petitioner : Mr. P.Saravana Sowmiyan

For Respondent : Mr.M.Vivekanandan

ORDER

Accused A1 to A3 are the revision petitioners herein .

2. This revision petition is filed against the judgment dated 11.04.2011 made in CA No.163 of 2010 on the file of the learned Additional Sessions Judge/Fast Track Court No.2, Gobichettypalayam confirming the judgment dated 16.11.2010 made in C.C.No.107 of 2010 on the file of the learned Judicial Magistrate No.2, Gobichettyapalayam.

3. The respondent herein filed a complaint seeking protection order, residential order and injunction against the present petitioner and others for restraining them from causing any domestic violence and for maintenance.

4. The learned Judicial Magistrate No.II , Mettupalayalm in C.C No.107 of 2010, after trial has held as against A1, A2



and A3 that they have committed domestic violence under Sections 18,19,20 and 21 of Domestic Violence Act as against the wife (respondent herein) and have not returned the jewels and ordered for return of articles and also held that she is entitled for residential order in respect of the property discussed infra and awarded interim maintenance. The appeal preferred by the accused A1 to A3 in CrI.A.No. 163/2010 was dismissed. Hence the revision petition.

5. The first revision petitioner is the husband of the respondent second and third revision petitioners are the parents of the first revision petitioner. The respondent wife preferred domestic violence complaint before the learned Judicial Magistrate No.II, Gobichettipalayam for the relief as stated supra and in support of the same, she has examined herself as PW1 and marked Exhibits.P.1 to P.10. On behalf of the first accused/ husband examined himself as RW1 and marked Exhibits.R.1 to R6. Based upon the oral and documentary evidence, the learned Magistrate has rendered a finding that the complaint preferred by the wife is maintainable before the Court and as the accused/husband has not demonstrated property in question is the self acquired property of the parents and consequently held that the petitioner/wife is entitled for residential order. Further he ordered for injunction restraining the husband and parents -in- law not to interfere and cause domestic violence on her and also held that she is entitled for interim maintenance and also ordered for return of jewels as claimed by the wife in the petition and on appeal the same is confirmed by the lower Appellate Court.

6. The learned counsel for the revision petitioner has contended that the complaint is not maintainable and has no jurisdiction under Section 27 of the Protection of Women from Domestic Violence Act, 2005 and the Court went wrong in shifting the burden upon the accused to prove that the property is selfacquired of the second accused and the first accused has no share in it. The complainant has got no right of residence and the property is an ancestral property of the second accused. The gift items alleged to be brought by the complainant should be returned on mere presumptions and surmises. The complainant has not proved that she has brought the gift items and no inventory was also placed before the Court and failed to see that the complainant is already receiving a sum of Rs.2000/- as interim maintenance from the first accused in pursuant to the order in IA No.119 of 2008 in HMOP No. 74 of 2008 on the file of the Sub Court, Mettur and failed to see that the complainant herself has admitted that there was never any threat to her life or property by the accused and failed to see that the first accused is receiving only a sum of Rs.3000/- per month as salary and cannot comply two maintenance orders.

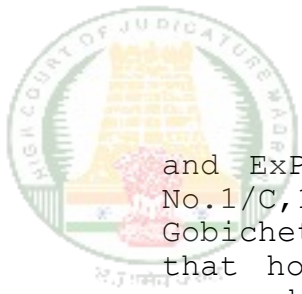


7. The learned counsel for the respondent/wife made submissions in support of the judgment of the trial court. After hearing the rival submissions and also perusing the oral and documentary evidence adduced before the trial Court it is seen that solemnization of marriage between the first revision petitioner and the respondent took place on 07.02.2001 in Saptha Rishi Marriage Hall, Mettur Dam and they are residing together for sometime in the said address are not in dispute. From the cross examination of PW1 and chief examination of RW1, it is seen that the respondent/wife is having some medical history resulting in position that she cannot bear a child and the issue has been developed which resulted in recurrence of such incident and the respondent wife left the matrimonial home and thereafter it appears that the revision petitioner /husband filed HMOP No.74 of 2008 for divorce on the ground stated under the Hindu Marriage Act. Thereafter this domestic violence case appears to have been filed seeking the relief under sections 18,19,20,21 and 22 of the Domestic Violence Act. It is not in dispute that there is an order of interim maintenance awarded in favour of the wife in I.A.No.119 of 2008 from the competent matrimonial court.

8. The learned counsel for the revision petitioner/husband would contend that the question of maintainability before the Gobichettipalayam Judicial Magistrate Court has been raised based upon the address given by the respondent/wife in the proof affidavit filed in this case as well as in the case before the HMOP Court. In the absence of any positive evidence that she is residing in the said address now given in the domestic violence Act, the court below has erred in causing burden wrongly upon the husband and held that it is maintainable.

9. The vital issue that has to be gone into this revision is whether the revision petitioners 1 to 3 have subjected the respondent /wife into Domestic Violence Act whether the respondent/ wife is entitled for any further interim maintenance in addition to amount already awarded in IA No.119 of 2008 in HMOP 74 of 2008 and whether the respondent/wife is entitled for residential order to reside and whether the alleged jewels as spoken by the respondent/wife are in possession of the first revision petitioner / husband so as to order or direct him to return the jewels.

10. Arguments have been heard in length by this Court. From the evidence of PW 1 as well as the oral and documentary evidence adduced before the Magistrate Court it is seen that after filing HMOP No. 74 of 2018 before the competent Court namely Sub Court, Mettur Dam, it appears that the respondent/wife has preferred this domestic violence case. Ex.P.7 is the house tax receipt, Ex.P8 is the patta certificate



and Exp.9 is the sale deed in respect of house bearing Door No.1/C,1/D and 1/E, Madesappan Koil, 2nd Street, Gobichettipalayam. PW.1 in the cross examination has admitted that houses are standing in the name of the second and third respondent, who are father-in-law and mother-in-law of the respondent. When admittedly the properties stand in the name of the father-in-law (second revision petitioner) and mother-in-law (third revision petitioner), the document has also indicated that it is a self acquired property and it appears that both the Courts below without properly appreciating the documents, have come to the conclusion that this property has been purchased from and out of the income derived from the land and consequently seems to have been ordered for residential order in favour of the respondent. The Honourable Supreme Court in the decision reported in 2007(3) CTC, 219 have categorically held that wife is not entitled for residential order in respect of the property exclusively owned by the father-in-law and mother-in-law and hence the findings rendered by the learned Judicial Magistrate as well the learned Additional Sessions Judge that the husband has not proved the self acquired properties of the parents, when PW1/wife has marked the documents and he admits that the property is standing in the name of the father-in-law, hence that does not need any further orders. Accordingly the residential order passed by the trial Court is unsustainable and the same is liable to be set aside.

11. The next contention is that when there is already an order of interim maintenance by the competent Court namely, the Sub court, Mettur Dam wherein divorce proceedings are pending has granted some Interim order in IA No.119 of 2008 there cannot be any additional interim maintenance under Domestic Violence Act and hence it is hereby clarified that the entitlement for Rs.1500/-as maintenance is hereby confirmed. However, she cannot get claim over and above the interim maintenance already granted and it is clarified that she is entitled for only one maintenance from the judicial forum.

12. The next point for consideration is that with regard to the directions issued by the learned Judicial Magistrate No.II, Gobichettyapalayam for return of jewels of 40 sovereigns, PW1 in his cross examination admitted that she has not filed the list of jewels that is said to have been given. In the absence of any list or description of jewels and corresponding weight, therefor and in the absence of any positive evidence to show that 40 sovereigns have been given at the time of marriage and the same being in the possession of the first revision petitioner/ husband, there cannot be any direction for returning the same. As the wife has not filed proof at the time of marriage 40 sovereigns has been given and the same was in the custody of the first revision petitioner/husband, there cannot be an order to that effect. In



view of the same, for want of evidence, the said directions issued by the learned Judicial Magistrate, as confirmed by the lower Appellant Court needs interference. Accordingly such the said directions is here by set aside. Thus, in fine the residential order granted by the trial Court and the directions for return of jewels by the trial Court are hereby set aside. Interim maintenance awarded by the trial Court is hereby confirmed. However, for the purpose of execution there can be only an order of interim maintenance as awarded would enforced by the husband.

13. In the result this Criminal Revision in Crl.R.C.No. 970 of 2011 is partly allowed. Residential order passed in CC. No.107 of 2010 as confirmed in C.A.No.163 of 2010 is hereby set aside and the order directing the first revision petitioner to return the jewels is also set aside. In respect of award of interim maintenance as discussed supra, award of maintenance is confirmed. However execution will be only in respect of only one maintenance, either by the order of the Judicial Magistrate Court. No.II, Gobichettipalayam or by the Additional Sessions Court/Fast Track Court No.2, Gobichettipalayam after adjusting the same. Consequently connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Additional Sessions Judge/Fast Track Court No.2,
Gobichettipalayam
2. The Judicial Magistrate No.2,
Gobichettyapalayam
3. Do Through The Chief Judicial Magistrate, Erode.

Copy to

The Section officer
Criminal Section, High Court, Madras 104.

+1 CC to Mr.P. Saravana Sowmiyan, Advocate sr 81763.

CRL.RC.No.970 of 2011

SV(CO)
SP(11/01/2019)