

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on :09.07.2018  
Orders Pronounced on:12.10.2018

CORAM :

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1452 of 2012  
and  
Crl.R.C.No.804 of 2013

C.Chandrasekaran ...Petitioner in Crl.R.C.No.1452 of 2012  
S.Uma ...Petitioner in Crl.R.C.No.804 of 2013

Versus

S.Uma ...Respondent in Crl.R.C.No.1452 of 2012  
C.Chandrasekaran ...Respondent in Crl.R.C.No.804 of 2013

Crl.R.C.No.1452 of 2012: Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to call for the records of the learned Judge for EC Act cases at Salem in C.A.No.125 of 2010 dated 07.09.2012 in dismissing the appeal filed by the petitioner herein.

Crl.R.C.No.804 of 2013: Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to call for the records of the learned Judge for EC Act cases at Salem in C.A.No.123 of 2010 dated 07.09.2012 partly allowing the appeal filed by the petitioner herein against the under in C.M.P.No.1331 of 2010.

For Petitioner in  
Crl.R.C.No.1452 of 2012 : Mr.P.Kavundarayan  
Legal-Aid counsel

For Respondent in  
Crl.R.C.No.1452 of 2012 : M/s.Auxilia Peter  
- No appearance

For Petitioner in  
Crl.R.C.No.804 of 2013 : M/s.Auxilia Peter  
- No appearance

For Respondent in  
Crl.R.C.No.804 of 2013 : Mr.P.Kavundarayan  
Legal-Aid counsel

O R D E R

As both Criminal Revision Cases in Crl.R.C.Nos.1452 of 2012 and 804 of 2013 are arising out of a very same order passed in C.M.P.No.1331 of 2010, dated 05.07.2010, both the cases are taken up together and disposed by this common Order.

2. For the sake of convenience, the parties to these Criminal Revision Cases are hereinafter referred to as per their array in Crl.RC.No.1452 of 2012 filed by the husband.

3. The respondent herein, who is the wife of the petitioner, has moved C.M.P.No.1331 of 2010 under Section 18, 19, 21 and 22 of Domestic Violence Act against the petitioner/husband before the learned Judicial Magistrate No.II, Sankagiri. The learned Judicial Magistrate No.II, Sankagiri allowed the said petition in C.M.P.No.1331 of 2010 on 05.07.2010 and directed the husband to

a. Return the 14 sovereigns of gold jewels to the wife within one month from the date of order.

b. Pay compensation of Rs.3,00,000/- to the wife within 3 months.

c. And further directed to pay maintenance of Rs.5,000/- to the male child till he attains majority. (Date of birth of child is 20.07.1999)

4. Aggrieved against the same the respondent/wife has filed Crl.A.No.123 of 2010 for enhancement of the compensation amount ordered by the trial Court. The petitioner/husband has also filed Crl.A.No.125 of 2010 to set aside the order passed by the trial Court. By a common order dated 07.09.2012, the learned Special Judge, EC Act, Salem dismissed both the appeals, hence, the present Criminal Revision Cases are filed.

5. Heard both sides and perused the records.

6. By the order dated 05.07.2010, the Judicial Magistrate II, Sankagiri allowed the C.M.P.No.1331 of 2010 filed by the wife and directed the husband to return 14 sovereigns of jewels and to pay a compensation of Rs.3,00,000/- to the wife and also to pay maintenance of Rs.5,000/- to the minor son till he attains majority. As against the same, both the petitioner and the respondent have filed appeals. The Appellate Judge, while allowing the appeal preferred by the respondent/wife and enhancing the maintenance amount from Rs.3,00,000/- to Rs.5,00,000/-, dismissed the appeal filed by the petitioner. Not being satisfied with the enhancement of the maintenance amount from Rs.3,00,000/- to Rs.5,00,000/-, the respondent/wife has filed Criminal Revision Case No. 804 of 2013, while the

husband filed CrI.R.C.No.1452 of 2012 seeking to set aside the orders passed by both the Courts below.

7. Heard the counsel for both sides and perused the materials placed on record. Before the trial Court, the respondent/wife was examined as PW1. In her deposition, PW1 has admitted that when the petitioner/husband was in Bangalore in connection with his employment, she had moved away from the matrimonial home with the help of her brother. She further admitted that she had vacated the matrimonial home, taken back the articles such as Television, Air conditioner, Refrigerator, Washing Machine etc., She further deposed that she had also taken possession of the Red Colour Maruti Van bearing Registration No. TN10-U-5902 and entrusted the possession of the Car to her brother. She further deposed that the two wheeler - Bajaj Pulsar bearing Registration No. TN-10-B-5494 belonged to the petitioner/husband was also taken possession of by her. She further deposed that since the petitioner/husband is in possession of the jewels presented to her at the time of marriage, in lieu of the jewels, she had driven away the two wheeler. Thus, it could be evident from the deposition of PW1 that she had voluntarily left the matrimonial home and she had also taken all her personal belongings, including the two wheeler owned by the petitioner/husband in lieu of her jewels which according her, is in the custody of the petitioner/husband. In such circumstances, as rightly pointed out by the courts below, the respondent/wife had deserted the matrimonial company of the petitioner/husband voluntarily and therefore, the question of the petitioner/husband subjecting the wife/respondent to matrimonial cruelty does not arise. I also find that there is no evidence adduced on the side of the respondent-wife that she was driven away from the matrimonial home by the petitioner/husband, while so, the question of invoking the provisions contained under the Domestic Violence Act does not arise. In the light of the above, the direction issued by the trial court, to the petitioner/husband return the 14 sovereigns of jewels to the respondent/wife cannot be sustained and it is hereby set aside.

8. The next dispute between the husband and wife relates to award of compensation payable to the respondent/wife. The trial Court awarded Rs.3,00,000/- which was enhanced to Rs.5,00,000/- by the Additional Sessions Judge. Not satisfied with such enhancement, the respondent/wife filed CrI.R.C.No.804 of 2013 for further enhancement to the tune of Rs.8,00,000/-. In this connection, my attention was drawn to the cross-examination of both P.W.1 and R.W.1 which goes to the show that the petitioner and the respondent have commenced a Computer Centre by borrowing loan amount from the sister and sister's husband of the respondent/wife. As per the understanding, the profit and loss

that may be derived from the business can be equally shared among the petitioner/husband and the sister's husband of the respondent. It appears that the business did not go well and a loss of Rs.14 lakhs was sustained. As per the agreement, according to the petitioner/husband, he had already paid a sum of Rs.7 lakhs to the respondent's sister towards the loss sustained in the business. Admittedly, there was no evidence brought on record to prove the commencement of business or the loss caused thereof and the Appellate Court enhanced the compensation amount purportedly on the ground that the loan amount received by the petitioner/husband has not been repaid. There is also no evidence that the respondent/wife has received her salary of Rs.8,00,000/- from and out of the business, as alleged by the petitioner/husband. In the absence of any positive evidence in support of the respective pleadings with regard to commencement of running of a computer centre which has resulted in loss, the courts below ought not to have considered the same and to award compensation in favour of the respondent/wife. In any event, Section 22 of the Domestic Violence Act will not get attracted to this case as it was clearly proved that the petitioner/husband did not subject the respondent to matrimonial cruelty in any manner. In such circumstances, the amount of compensation of Rs.3,00,000/- awarded by the trial court, which was enhanced to Rs.5,00,000/- by the Appellate Court cannot be sustained. Having regard to the above facts, the amount awarded by both the courts below are set aside, instead, the petitioner/husband is directed to pay a sum of Rs.1,00,000/- to the respondent/wife, in the interest of justice, within a period of eight weeks from the date of receipt of a copy of this order.

9. It is seen from the records that the petitioner and respondent were living together from the year 1998 till 2009. Out of their wedlock, a male child was born on 20.07.1999 and now he had attained majority. At the time when the respondent wife deserted the matrimonial home, the male child was 11 years. Therefore, the courts below are justified in directing the petitioner/husband to pay a sum of Rs.5,000/- towards maintenance of the minor son, which does not call for any interference by this Court. The petitioner/husband has a legal duty to maintain the minor son born out of the wedlock with the respondent. The petitioner is therefore directed to pay the sum of Rs.5,000/- per month as directed by the trial Court, calculate the arrears payable thereof till the date of the minor attaining majority and deposit the same to the credit of C.C.No.125 of 2010 within a period of eight weeks from the date of receipt of a copy of this order.

10. With the above modifications, the Criminal Revision Case filed by the respondent/wife, being CrI.R.C.No. 804 of 2013 is dismissed and CrI.R.C.No.1452 of 2012 filed by the petitioner/husband is partly allowed to the extent indicated above.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

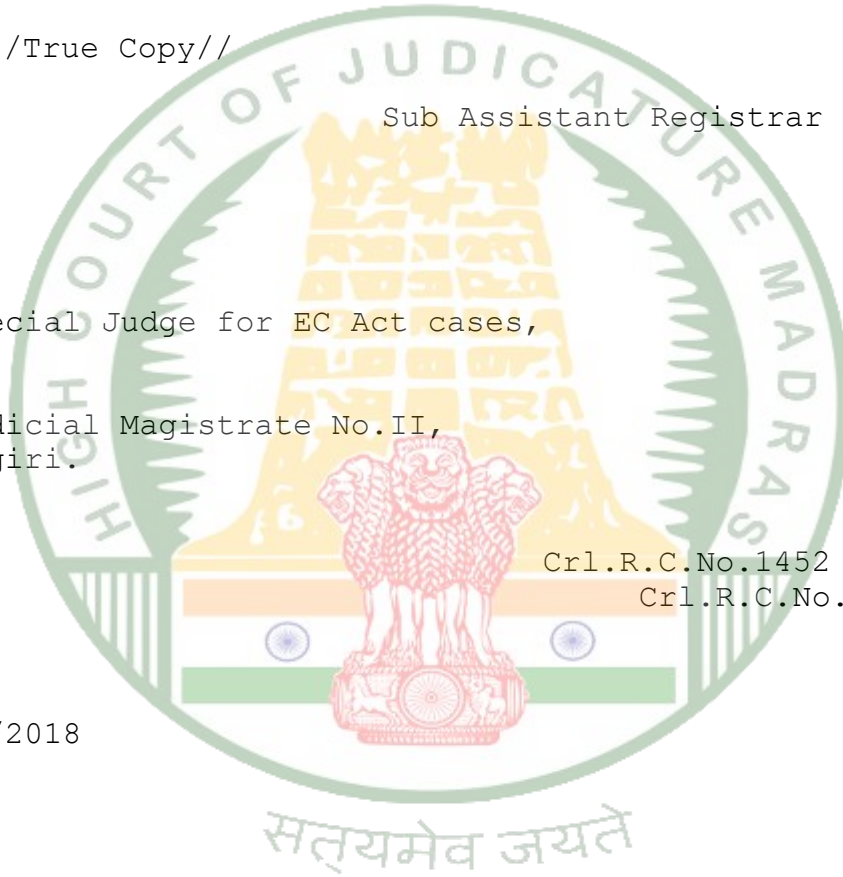
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To

1. The Special Judge for EC Act cases,  
Salem.
2. The Judicial Magistrate No.II,  
Sankagiri.

CrI.R.C.No.1452 of 2012 and  
CrI.R.C.No.804 of 2013

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