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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.04.2018

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C.No.413 of 2011
and
M.P.No.1 of 2011

1.V.H.Mohammed

2.Beekutty Amma

.. Petitioners

Vs.

1.M.Sameera

2.Minor Vidha

represented by her mother
and natural Guardian
M.Sameera.

.. Respondents

Criminal Revision filed under sections 397 and 401 of Criminal Procedure Code against the judgment of the Additional District/Sessions Court cum Fast Track Court No.III, Coimbatore passed in Crl.R.C.No.70 of 2009 dated 03.08.2010 reversing the order of dismissal passed by J.M.II, Coimbatore in Crl.M.P.No.4516 of 2008.

For Petitioners	:	Mr.T.Gowthaman
For Respondents	:	Mr.N.S.Sivakumar

O R D E R

Being aggrieved over the order passed by the by the Additional District and Sessions cum Fast Track Court No.III, Coimbatore in Crl.M.P.No.4516 of 2008 dated 03.08.2010 filed this application to set aside the order passed in the above said Crl.M.P. is erroneous one.

2.Admittedly the first petitioner is the father in law of the first respondent and the second petitioner is the mother in law. The marriage between the first respondent with the son of the petitioners happened on 21.05.2000. After the solemnization of the marriage, the first respondent and her husband was lived as husband and wife in Kerala for 10 days in the house of the



petitioners. Subsequently, they got shifted to Calicut and started a business in the name and style of "Kavitha Auto Parts" and thereafter, due to the loss in the business, again they shifted the family to Bangalore in the year 2005. During that time, the petitioners and their son ill-treated the first respondent and demanded more dowry and there was a misunderstanding arose between the respondent and her husband and as of now, the husband of the first respondent is residing in U.K. Initially the respondent herein in the year of 2008, filed a petition before J.M.No.II, Coimbatore under the provisions of section 12 of Protection of Women from Domestic Violence Act 2005. In the said application, the respondent herein being the petitioner seeking the relief of direction to All Women Police, Coimbatore for recovering the articles from the custody of the present petitioners residing in Kavitha House, Maparambu, Kurichakulam, Palakkad, Kerala. The list of articles mentioned by the petitioner is follows:

- 1.Sewing Machine - 1 No
- 2.Iron Box (Bajaj) - 1 No
- 3.Two Tables
- 4.T.V.(BPL) DVD (L.G) Radio set (Sony)
- 5.Beuro - 1 No
- 6.Godrej -Cold God - 1 No
- 7.Stove and Gas - 2 Nos
- 8.Washing Machine L.G
- 9.Bed Cot Pillow
- 10.Steel Plates Bowl
- 11.Glass plates Bowl
- 12.School file,Birth file
- 13.Cycle
- 14.Plates items
- 15.and books
- 16.Clothes
- 17.Album
- 18.Mixie 2 (Preethi)
- 19.Grinder (Laxmi)
- 20.Chappal stand and chappals
- 21.Nidha (Toys)
- 22.26 Sovereign of Gold Ornaments
- 23.10 Sovereign Thali

3.In the petition, it is alleged that the above mentioned articles are is in the custody of the present petitioners and with the husband of the first respondent. During the time of filing application before the Judicial Magistrate, the husband of the first respondent was added as a party to the petition, further, the respondent seeking the relief against her husband also. After elaborate enquiry, the learned Magistrate, partially allowed the application and dismissed the petition as against the present revision petitioners.

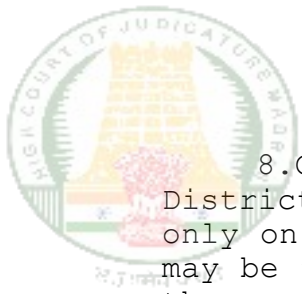


4. Against the dismissal order passed by the learned Magistrate, the respondent herein filed a revision before the Additional District and Sessions Judge, Fast Track Court No. III Coimbatore for set aside the order passed by the learned Judicial Magistrate No. II, Coimbatore, with regard to the present petitioners. The learned District and Sessions Judge allowed the said petition and directed the petitioners to return the petition mentioned articles to the first respondent. Against which the present revision is preferred.

5. In order to substantiate the claim made by the petitioners, the counsel, who is appearing for the petitioners made a submission that during the time of passing orders, the learned District and Sessions Judge omitted to see the important fact that whether the properties are entrusted with the present petitioners or not. The impugned order passed by the District and Sessions Judge is based under the presumption. According to the counter filed by the petitioners before the learned Magistrate, they denied all facts that they are not living with the respondent herein at any point of time. More over, the first respondent listed so many household articles are now not under the custody of the present petitioners. Without showing the proof for entrustment, we cannot come to the conclusion that the petition mentioned properties are in the custody of the petitioners. Thereby, he seeks to set aside the order passed by the District and Sessions Judge, Fast Track Court No. III, Coimbatore.

6. On the other hand, the learned counsel appearing for the respondent make a submission that the petition filed under the provisions of Protection of Women from Domestic Violence Act 2005 is the beneficial legislation for the welfare of the women, who suffered in the matrimonial house. It is probable that, during the time of marriage, the parents of bride have to give some Srithana properties for which no list have been prepared by other parties. So it is probable to the present petitioners for receiving the petition mentioned properties and now refused to handed over the same to the first respondent. Further, he added since the husband of the first respondent is residing in U.K, there is no chance for take the household articles to U.K.

7. Now on considering the rival submissions made on either side, it appears in the counter statement filed before the Magistrate, the present petitioners categorically mentioned only for the period of two weeks, they are residing in the Bangalore for the purpose of getting medical treatment. In otherwise they stated that they are residing with the respondents only for the period of 10 days after the solemnization of marriage.



8. On go through the order passed by the Additional District/Sessions Court cum Fast Track Court No.III, Coimbatore, only on presumption, the judge came to the conclusion that there may be the chance for holding the petition mentioned articles by the petitioners after leaving the husband of the first respondent from India. During the time of disposal, the application filed by the first respondent, before the learned Magistrate No.II, Coimbatore, two witnesses were examined on the side of the respondent and six exhibits were marked to prove their case. On the other hand, on behalf of the present petitioners, the second petitioner examined as R.W.1. So, the entire evidence and documents put forth by the respondent's shows after the dispute arose between the husband and wife, a case has been registered against the husband of the respondent by the All Women Police, Pasavakudi Police Station situated in Bangalore. More over the respondent had not proved the fact that the present petitioners are ill-treated her. Further the respondent has not proved that the petitioners are committed the domestic violence as per the definition of Domestic Violence enumerated in section 3 of Act. First respondent alone has to prove that the petition mentioned articles are handed over to the petitioner. Since the fact that the petitioners are not resided with the respondent, we cannot presume that the petitioner take the petition mentioned articles from the matrimonial home. Further more, after leaving the matrimonial home, before filing this application, the respondent herein not lodged any complaint before the Social Welfare Officer for settling the dispute. Even, she had not sent a legal notice to the petitioners for get back the articles which were mentioned in this application. The said application has been filed only after lodging the complaint in the police station against the petitioners and their son. So, without proving the entrustment, we cannot come to the conclusion that the petition mentioned articles are now under the custody of petitioners. Without considering those aspects, the District and Sessions Judge, Fast Track Court No.III, Coimbatore passed an order in favour of the respondent warrants interference.

9. Accordingly, this petition is allowed. The order passed by District and Sessions Judge, Fast Track Court No.III, Coimbatore is set aside. The order passed by the learned Judicial Magistrate No.II is restored. Accordingly, this Revision Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

mfa



To

1. Additional District/Sessions Judge,
Additional District/Sessions Court cum Fast Track Court No.III,
Coimbatore.

2.The Judicial Magistrate No.II,
Coimbatore.

+lcc to Mr.N.S.Sivakumar, Advocate,sr.no.29933

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and M.P.No.1 of 2011

KAN (CO)

RRK (22/05/18)