

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.07.2017

DELIVERED ON : 05.03.2018

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

Crl.R.C.Nos.120 to 122 of 2015 and
M.P.Nos.1 to 1 and 2 to 2 of 2015

1.Arunachalam @ Arun
rep. By his power of attorney agent
Mr.A.R.Muthiah

2.A.R.Muthiah

3.M.Adakkammai

.. Revision Petitioners
in all the Crl.R.Cs.

Vs.

1.S.Ambika
2.Minor Hashini
D/O.Arunachalam @ Arun
Rep.by mother and natural
Guardian S.Ambika.

.... Respondents in
all the Crl.R.Cs.

Petitions filed under Sections 397 and 401 of Cr.P.C against the orders dated 09.12.2014 in Criminal Appeal Nos.202, & 203 of 2014 on the file of the Principal Sessions Judge, Chennai, confirming the orders dt:15.07.2014 in Crl.M.P.Nos. 1142 of 2014, 1141 of 2014 & 1140 of 2014 in M.C.No. 21 of 2014 on the file of the XXIII Metropolitan Magistrate Court, Saidapet, Chennai.

For Petitioners
in all the Crl.R.Cs. : Ms.A.L.Gandhimathi

For Respondents
in all the Crl.R.Cs. : M/s. Sivanandh & Associates

COMMON ORDER

These three criminal revision cases were filed against the common order passed by the learned III Additional Judge, City Civil Court, Chennai, in Criminal Appeal Nos. 202, 203 and 204 of 2014, dated 09.12.2014. The revision petitioners in these three revision petitions are husband and in laws of the first respondent wife. The first respondent wife and second respondent minor daughter approached the Magistrate Court by filing M.C.No.624 of 2013 invoking Section 125 of Cr.P.C.. The wife and child filed three miscellaneous petitions in CrI.M.P.Nos.1140, 1141 and 1142 of 2014 in M.C.No.21 of 2014 under the provisions of Protection of Women from Domestic Violence Act 2005, hereinafter referred to as 'the Act' for seeking the monetary relief of maintenance, return of Sreedhana Properties and also for Residence orders.

2. Since the wife and child, who are the petitioners before the Magistrate Court who invoked the provisions of Domesitc Violence Act, are the respondents herein, they are, for the sake of brevity, called as 'wife' and 'child'. Like that, since the first appellant herein is the husband and the second and third appellants are the parents of the first appellant, they are, for the sake of brevity, called as 'husband' and 'parents'. Since all these criminal revisions were filed against the common order passed by the III Additional City Civil Judge in the aforesaid criminal appeals, though three separate revision petitions have been filed herein, these revision cases are disposed of by this common order.

3. The wife and child filed M.C.No.624 of 2013 before the Family Court at Chennai where, they sought for the prayer of maintenance, for a sum of Rs.50,000/- per month for the wife and Rs.35,000/- per month for the child, from the husband. During the pendency of the said maintenance case, the wife and child filed the aforesaid three miscellaneous petitions, for the relief as has been referred to above. The learned Magistrate, after having heard both sides, passed separate orders, in each of the miscellaneous petitions by order dated 15.07.2014.

4. Accordingly, in CrI.M.P.No.1140 of 2014 in M.C.No.21 of 2014 the Magistrate Court, passed an order directing the husband to hand over the house property at No.8/12, Ceebross Royal Garden Avenue, Kesavaperumal puram, R.A.Puram, Chennai 600 028, to the wife and child. Like that, on the same date, the learned Magistrate in his order in CrI.M.P.No.1141 of 2014, directed the husband to pay a sum of Rs.50,000/- to the wife and Rs.35,000/- to the child, for their monthly maintenance and also the learned Magistrate on the same date in CrI.M.P.No.1142 of 2014, has directed the husband, to

return the Sreedhana Properties, as per the list furnished by the wife, if it is available with the husband.

5. Aggrieved over the said orders passed by the learned Magistrate, the husband as well as the parents filed Criminal Appeal Nos.202, 203 and 204 of 2014. The said appeals were heard and decided by a common order passed by the III Additional City Civil Judge, by order dated 09.12.2014. In the said order, the Appellate Court, though has confirmed the order passed by the learned Magistrate in respect of CrI.M.P.Nos.1142 of 2014 and 1140 of 2014 by allowing the respective appeals in Criminal Appeal Nos.202 of 2014 and 203 of 2014, however, has modified the order passed by the learned Magistrate in CrI.M.P.No.1141 of 2014 to the effect that the husband shall pay a sum of Rs.45,000/- to the wife and Rs.30,000/- to the child as interim monthly maintenance from the date of petition i.e., from 20.03.2014, in Criminal Appeal No.204 of 2014.

6. Aggrieved over the said orders passed by the learned Judge/Appellate Court, in the common judgement dated 09.12.2014, these three Criminal Revision Cases have been filed by the husband and the parents against the wife and the child.

7. I have heard Ms.A.L.Gandhimathi, learned counsel appearing for the revision petitioners and Mr.Sivanandh, learned counsel appearing for the respondents.

8. The case of the wife and child is that, the marriage was solemnized between the husband and wife at the wife's parental house on 24.10.2007. According to the wife, at the time of her marriage, the parents of the wife paid a sum of Rs.3.5 Lakhs as Sreedhana money that apart, she claimed that a further sum of Rs.20 Lakhs by way of demand draft, has also been given to the husband and his parents, as Sreedhana money. That apart, it was claimed by the wife that, 110 sovereigns of gold jewels, 40 Carat Diamond and 35 kilograms of Silver as well as the required house hold articles and items had been given by the wife's side to the husband as Sreedhana properties.

9. It was further claimed by the wife that, after the marriage, the couple lived together for some time and out of the wedlock, they gave birth to the child Hashini, who is the second respondent herein. Thereafter, in the year 2009, the respondent left for New Zealand for job and after that, he did not return. In that circumstances, it is the claim of the wife that, the parents of the husband found mistakes in each and every action of the wife, with the result, the wife was not able to live in the matrimonial house. Since the relationship strained for some years, in the year 2013, the husband filed a petition seeking for divorce before the Family Court at Madurai. Correspondingly, the wife filed M.C.No.624 of 2013 seeking

maintenance from the husband for herself and the child, before the Family Court at Chennai. Subsequently, the wife and child filed M.C.No.21 of 2014 under the Domestic Violence Act where, they filed three separate miscellaneous petitions for the relief sought for, as has been set out above.

10. In all these miscellaneous petitions, both parties were heard and the learned Magistrate passed orders, as set out above in those petitions against which the husband and parents filed appeals where except the minor modification made by the Appellate Court in the order made in Crl.M.P.No.1141 of 2014 passed by the learned Magistrate by his order dated 15.07.2014, in Criminal Appeal No.204 of 2014, the Appellate Court has confirmed the orders passed by the learned Magistrate in all the three miscellaneous petitions, i.e., M.P.Nos.1140, 1141 and 1142 of 2014.

11. On perusal of the judgement of the learned Magistrate as well as the common judgement of the Appellate Court, this Court finds that, the solominization of marriage between the parties that is the husband and wife was not in dispute. Out of the wedlock, the female child Hashini, who is the second respondent herein was born also was not in dispute. Even with regard to Sreedhana properties claimed to have been given to the husband by the wife's side including a sum of Rs.23.5 Lakhs had also not been disputed. Further, it is the claim of the husband that out of the money paid to him by the wife's side, properties were purchased in the name of the wife only and the said property documents had been given or handed over to the wife and it is now only with the custody of the wife. Excepting these aspects, there was no major denial or contradictory statement made by the husband's side before the trial court.

12. However, in so far as the claim of the wife for domestic violence case is concerned, it was strenuously contended by the husband's side and in fact he had claimed that from 2009 onwards, the wife was not living with the husband and whenever the respondent demanded for joint living where the husband is working, the wife did not agree for that and since the wife had been living separately for years together there was no chance of any domestic violence on the part of the husband or the parents and therefore, according to the husband, absolutely there was no ground to invoke the provisions of Domestic Violence Act and therefore, the main petition filed under Section 12 of the Domestic Violence Act would not stand and hence, the miscellaneous petitions filed therein where interim orders have been passed, which are the subject matters in these revisions, also cannot stand.

13. However, on the wife side it is their definite case that at least from the year 2009, the husband did not

maintain either the wife or the child and they have been continuously living in their parental house and inspite of the heavy amount having been paid as Sreedhana money apart, from jewels and other house hold items given to the husband as Sreedhana properties, the husband did not come forward to live together with the wife and child or has come forward to maintain the wife and child. Though these issues have to be gone into by detailed examination by the trial court where the main case filed under Domestic Violence Act is pending, in view of the exceptional provisions made in the Domestic Violence Act, the trial court is empowered to decide any application filed seeking the appropriate relief for interim maintenance, residential orders as well as return of Sreedhana Properties ect.,

14. Only in that context, the learned Magistrate has passed an order allowing all the miscellaneous petitions filed by the wife and child. The said orders, though had been appealed and attacked by the husband, the Appellate Court after having gone through the orders passed by the learned Magistrate, had come to the conclusion that nothing is there to interfere with the said orders excepting a small modification in the order passed by the learned Magistrate with regard to the interim maintenance.

15. For the said modification, the learned Judge of the Appellate Court has given a reason that, since the husband has produced the salary certificate which discloses that his salary is for a sum of Rs.1,74,853/- which was not Rs.2 Lakhs as claimed by the wife, there is a justification to make a slight modification of the amount awarded by the Trial Court as interim compensation to the wife and child. Accordingly, the Appellate Court has modified the said amount of Rs.50,000/- and Rs.35,000/- respectively to the wife and the child as compensation into Rs.45,000/- and Rs.30,000/- respectively thus, ordering totally a sum of Rs.75,000/- as interim maintenance/compensation to the wife and the child.

16. In so far as the complaint made by the wife and child invoking the provisions of Domestic Violence Act is concerned, since the main case filed by the wife and the child is pending consideration before the Trial Court, it is for the parties to the proceedings to make out their respective cases before the learned Magistrate and get their relief. Since the provision of the Domestic Violence Act empowers the aggrieved person to file interim applications seeking appropriate relief such as return of Sreedhana properties, for getting residential orders as well as for getting interim maintenance under the provisions of Sections 19 and 20 read with Section 23 of the Act, those petitions have been taken up for consideration and decided by the learned Magistrate. In so far as the claim of the return of Sreedhana properties are concerned, the order

passed by the learned Magistrate as confirmed by the Appellate Court is that, since the list of Sreedhana properties claimed to have been given or handed over to the husband side since had been filed by the wife's side, the learned Judge has stated that the said Sreedhana properties to be returned to the wife's side if it is available with the husband. The said rider that "if it is available with the husband" as has been made by the learned Magistrate was confirmed by the Appellate Court because of the claim made by the husband's side that the said Sreedhana properties had been in the bank locker and the key of the safe locker is very much available with the wife only. Therefore, as per the order of the learned Magistrate, as confirmed by the Appellate Court, in so far as the return of Sreedhana properties is concerned, it is a justifiable order where a direction was given to the husband's side to return the Sreedhana properties to the wife's side if it is available with him. Therefore, if all the properties are not available with the husband's side it is for him to prove such a situation before the learned Magistrate in the main case pending before it. Therefore, the said order passed by the learned Magistrate as confirmed by the Appellate Court requires no interference from this Court.

17. In so far as the order of interim maintenance is concerned, the amount of Rs.50,000/- and Rs.35,000/- ordered as interim monthly maintenance by the learned Magistrate has been modified into Rs.45,000/- and Rs.30,000/- respectively for wife and child. In this regard, the Appellate Court has taken into account the salary certificate filed by the husband, according to which, his salary was Rs.1,74,853/-. Out of the salary, ascertaining that a suitable amount is required for the husband to maintain himself and also to maintain his parents, who are the other appellants herein and for the said purpose almost a sum of Rs.1 Lakh have been reserved and only the remaining amount of Rs.75,000/- alone had been directed to be paid by way of interim maintenance to the wife and child. Therefore, comparing with the earning of the husband, admitted as per the salary certificate, the order of interim maintenance which now stands modified in the impugned order by the Appellate Court, in the opinion of this Court, is not on the higher side and therefore, this Court feels that the said modified order in respect of interim monthly maintenance also does not warrant any interference from this Court.

18. In so far as the order pertaining to the residential order is concerned, it is the order of the learned Magistrate in Crl.M.P.No.1140 of 2014, where, the learned Magistrate has found that the husband has to maintain the wife and child and for their residential purposes he has to hand over the house property at No.8/12, Ceebross Royal Garden Apartments, Avenue, Kesavaperumal puram, R.A.Puram, Chennai 600 028, by vacating the tenants in the said residence and the said order

also has been confirmed by the Appellate Court. In this regard, it is the vehement contention on the part of the husband's side that the said property was purchased by the husband prior to the marriage out of his own earning and since the husband has been in foreign country and from 2009 onwards since the wife and child are not living with the husband, the said property had been let in for rent where the tenants have been put in possession.

19. Once the tenants are put in possession unless a reasonable cause is shown to the Rent Control Court, it cannot be said that the tenants can be thrown out over night. Moreover, depending upon the place where the wife and child wanted to reside either at the place where the wife's parents are living or any other place, it is for the wife to take a decision to reside and therefore, if at all the wife wants to reside either in Chennai or in any other town or place she can do so by taking the residential house for rent. Therefore, in that context, the wife cannot, that too by way of an interim relief compel the husband to vacate the premises which has already been let in for rent and hand over the same to the wife and child for residential purposes. At the same time, in order to take a decent house for the residence of the wife and child they require to pay the rent and therefore, the said rent also has to be paid atleast by way of interim arrangement by the husband. Therefore, instead of directing the husband to vacate the house which had already been let in for tenants and hand over to the wife and child for their residential purpose, this Court feels that the husband can pay a reasonable sum to the wife and child for taking the residential house on rental basis for their residential purposes. Therefore, this Court feels that the order passed by the learned Magistrate in Crl.M.P.No.1140 of 2014 in M.C.No.21 of 2014 as confirmed by the First Appellate Court in Crl. A.No.203 of 2014 requires interference from this court.

20. In the result, the following orders are passed in these Criminal Revision Cases:

(i) The order passed by the learned Magistrate in Crl.M.P.No.1142 of 2014, dated 15.07.2014 as confirmed by the order of the Appellate Court in Crl.A.No.202 of 2014, dated 09.12.2014 is confirmed.

(ii) The order passed by the learned Magistrate in Crl.M.P.No.1141 of 2014 dated 15.07.2014 as modified by the order of the Appellate Court issued in Criminal Appeal No.204 of 2014 dated 09.12.2014 is also confirmed.

(iii) The order passed by the learned Magistrate in Crl.M.P.No.1140 of 2014 dated 15.07.2014 as confirmed by the order of the Appellate Court in Crl.A.No.203 fo 2014 dated

09.12.2014 is set aside. Further, the said order has been modified to the following effect.

"That the husband/appellant in CrI.R.C.No.122 of 2015 shall pay a sum of Rs.20,000/- to the wife and child towards the monthly rent for every English Calender month till the disposal of the main maintenance case.

21. CrI.R.C.No.120 of 2015 and 121 of 2015 are dismissed and CrI.R.C.No.122 of 2015 is ordered in the terms indicated above.

22. The learned XXIII Metropolitan Magistrate, Saidapet, Chennai 600 015 is directed to dispose the main M.C.No.21 of 2014 within a period of three months from the date of receipt of a copy of this order. There shall be no order as to the costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

To

1. The XXIII Metropolitan Magistrate Judge, Saidapet, Chennai.
 - 2.Do Thro:The Principal Sessions Judge, Chennai.
 - 3.The Principal Sessions Judge, Chennai.
 - 4.The III Additional Judge, City Civil Court, Chennai.
 - 5.The Judge, Family Court, Chennai.
 - 6.The Public Prosecutor, High Court, Madras.
 - 7.The Section Officer, Crinimal Section Records, High Court, Madras.(2 copies)
- +3ccs to Mr.Ganthimathi, Advocate, sr.16916,16917 & 16918.

Pre-Delivery Order in
CrI.R.C.Nos.120 to 122 of 2015

BR(CO)
RMP(23/03/2018)