

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.02.2018
DELIVERED ON : 27.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.R.C.No.1532 of 2017
and
Crl.M.P.No.15348 of 2017

D.Manikandan ... Petitioner

Vs

Sudha ... Respondent

Prayer: Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code, against the rejected order in M.P.SR.No.19042/2017 in C.A.No.157 of 2014 dated 14.11.2017 passed by the learned Principal Sessions Judge at Chennai.

For Petitioner : Mr.B.Gopalakrishnan

For Respondent : No Appearance

JUDGMENT

This criminal revision is filed by the revision petitioner/appellant against the order of rejection passed in M.P.SR.No.19042 of 2017 in Criminal Appeal No.157 of 2014 dated 14.11.2017 by the Learned Principal District Sessions Judge at Chennai for marking the documents mentioned in the Petition.

Brief case of the petitioner:

2.The revision petitioner is the husband of the respondent. The marriage was performed at Sengunthar Thirumana mandapam, Polur Taluk, Thiruvannamalai District on 30.08.2004. At the time of marriage, the petitioners family demanded more jewels and after negotiation the respondent's family perform the marriage by putting 30 sovereigns gold, Hero Honda bike, house hold articles and paid a sum of Rs.1,00,000/- for the marriage. The revision petitioner was running a cable television business and earning a monthly income of Rs.35,000/- after 3 months, the revision petitioner started to demand more money and pledged all the jewels of the respondent and the parents of the respondent gave Rs.30,000/- to the revision petitioner due to torture

against her daughter. The revision petitioner is also having illicit relationship with one lady namely Suganya and leading extra marital life with her and abandoned the respondent and her children. Hence the respondent filed the petition under Domestic Violence Act in C.C.No.1220 of 2011 before the learned Vth Metropolitan Magistrate, Egmore, Chennai seeking maintenance of Rs.15,000/- per month, residents order with the direction to pay the sum of Rs.35,000/- as advance and Rs.3,500/- as monthly rent and direction to return all the articles awarding compensation of Rs.20,0,000/-

3.The Learned Judge issued notice to the revision petitioner and the same was return with postal endorsement refused and the respondent was called absent set exparte and directed the respondent to pay a monthly maintenance of Rs.10,000/. from the month of April , return the articles mentioned in Exhibit P3 to the respondent within one month and the revision petitioner is also directed to pay Rs.1,00,000/- as compensation.

4.Aggrrieved over the same, the revision petitioner filed Criminal Appeal No 157 of 2014 against the exparte order passed in C.C.No.1220 of 2011 dated 30.05.2011 by the Learned Vth Metropolitan Magistrate, Egmore, Chennai directing the petitioner to pay the maintenance of Rs.10,000/- per month from the date of April 2011 and the sum of Rs.1,00,000/- as compensation to the respondent. During the pendency of the criminal appeal, the appellant filed M.P.SR.No.19042 of 2017 under section 391 of Cr.P.C. for permission to take further evidence on his side for making his documents. The Learned Lower appellate Judge rejected the petition without numbering the same on the ground that the petitioner did not let in any evidence before the trial Court. Hence this criminal revision.

5.The Learned counsel for the revision petitioner contends that the Lower appellate Court miserably fail to appreciate the petition under section 391 of Cr.P.C. for taking further evidence on his side and marking the documents.

6.The Learned counsel for the revision petitioner contends that the Learned Principal Judge ought to have note that the Criminal Appeal No.157 of 2014 against the order in C.C.No.1220 of 2011 dated 30.05.2011 passed by the Learned Vth Metropolitan Magistrate, Egmore. In the above case the petitioner was set exparte and he was directed to pay a monthly amount of Rs.10,000/- as maintenance to the respondent and her children and Rs.1 Lakh as compensation.

7.The Learned counsel for the revision petitioner contends that the Learned trial Court erroneously passed the award of compensation and fixation of maintenance amount in C.C.No.1220 of 2011 dated 30.05.2011. The respondent who is the petitioner in the above case filed Domestic Violence Act seeking maintenance and award of compensation but she failed to produce the documentary evidence to prove the earning capacity of the petitioner/husband herein. The trial Court mechanically fixed up the quantum of maintenance as Rs.10,000/- monthly and Rs.1 Lakh as compensation.

8.The Learned counsel for the revision petitioner contends that Learned Trial Judge ought to have granted sufficient of time to the petitioner/husband to defend his case but hurriedly called him absent and set exparte.

9.The Learned counsel for the revision petitioner contends that the Learned Principal Judge miserably failed to note that the petition filed along with the four documents namely (1) Cable T.V. registration certificate dated 03.07.2017 (2) online bill of Cable T.V. (3) Electricity bill dated 27.07.2017 (4) School bills in the year 2012-2013.

10.The Learned counsel for the revision petitioner contends that the Learned Principal Judge miserably failed to note that the petitioner running cable T.V. business having 150 subscribers regularly for the month. He is a registered cable T.V. operator with the government registration No 1035, he got signal from the Tamil Nadu Arasu Cable T.V. Corporation Limited. As per the Government Norms to collect sum of Rs.70/- from each and every subscriber, out of that amount the petitioner have to pay sum of Rs.20/- to the Government for each subscriber for getting signal from the Tamil Nadu Arasu Cable T.V. Corporation Limited. Out of above said income to pay electricity charges and to maintain to the cable T.V. instrument and cable line. On the other hand the respondent working in the private sector and she got sufficient income per month she got salary sum of Rs.18,000/- per month. In the maintenance petition the respondent admits that she is working but mentioned that her salary sum of Rs.3,000/- and the same is false.

11.The Learned counsel for the revision petitioner contends that the Learned Principal Judge miserably failed to note the petitioner having 150 point cable connection (150 subscribers) each sub scriber and collect Rs.70/- the gross income of

Rs.10,500/- Out of that the petitioner have to pay to the Tamil Nadu Arasu Cable T.V. Corporation Limited for getting signal Rs.20/- for each connection (subscriber) for that paid sum of Rs.3,000/- per month, from the gross income. The petitioner also paying electricity charge averagely Rs.2,500/- and spend for maintain of the cable T.V. instrument and cable line for Rs.2,500/- per month. For child education annual fee sum of Rs.25,000/- per year, for proving the same the petitioner having sufficient documents, but he do not have any opportunity to produce the same before the trial Court because he was set exparte in the trial Court proceedings.

12.I have heard Mr.B.Gopalakrishnan, learned counsel for the petitioner and also perused the materials available on record including the docket order passed by the learned appellate judge. No representation on behalf of the respondent.

13.A careful reading of the Criminal Procedure Code, gives a power to the appellate Court to take additional evidence, which, for reasons to be recorded, it considers necessary. The Code thus gives power to the appellate Court to order one or the other as the circumstances may require leaving a wide discretion to it to deal appropriately with different cases. Additional evidence may be necessary for a variety of reasons which it is hardly necessary to list here. In the case on hand, the revision petitioner was set exparte and order has been passed without hearing his side. Hence he filed the application for marking the documents in the appeal which cannot be faulted as his mistake.

14.I do not propose to do what the Legislature has refrained from doing, namely, to control discretion of the appellate Court to certain stated circumstances. It may, however, be said that additional evidence must be necessary not because it would be impossible to pronounce judgment but because there would be failure of justice without it. The power must be exercised sparingly and only in suitable cases and the petitioner pointed out the reasons for filing the petition at this stage. Hence the lower appellate Court ought to have issued notice and hear the respondent in the application for marking the documents in the appellate stage. But a docket order was passed in numbering the same. There must be in some stage of the proceedings, the petitioner ought to have given liberty to open his case and the lower appellate Court could justified his action instead of dismissing his application. Once such action is justified, there is no restriction on the kind of evidence which may be received. It may be formal or substantial. It must, of course, not be received in such a way as to cause prejudice to the accused as for example it should not be received as a disguise for a

retrial or to change the nature of the case against him.

15.The Hon'ble Supreme Court in K.Venkataramiah vs. A.Seetharama Reddy & Ors., 1964 (2) SCR 35 (at page 46) observed that;

"... Apart from this, it is well to remember that the appellate Court has the power to allow additional evidence not only if it requires such evidence "to enable it to pronounce judgment" but also for "any other substantial cause". There may well be cases where even though the Court finds that it is able to pronounce judgment on the state of the record as it is, and so, it cannot strictly say that it requires additional evidence "to enable it to pronounce judgment," it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence "for any other substantial cause".

16.Learned Counsel for the petitioner also garnered support from a decision of this Court in State v. Shanthi 2006 Cri.L.J. 3082, in which case also, the above said case of Supreme Court was referred and followed and held that in the circumstances of the case, taking additional evidence was essential.

17.All the decisions cited by the learned counsel for the Revision Petitioner are agreed that the exercise of power by the lower appellate Judge under Section 391 of the Code of Criminal Procedure must be to meet the ends of justice so that injustice is not done to the petitioner on account of some irregularity in the conduct of trial or on ignorance has omitted to record the evidence of circumstances essential to elucidate the truth, with a caveat, that exercise of such power should not be with a view to fill up the lacunae in the evidence. Thus the Court acting under Section 391 of the Code of Criminal Procedure, 1973 is required to exercise its discretion to allow the revision petitioner to lead evidence and marking the documents, by examining himself at the appeal stage with circumspection and caution and only with the object of doing justice between the parties in the facts and circumstances of the case.

18.In the present case, it is seen that the revision petitioner had not disclosed any defence before the lower Court. The revision petitioner, for reason best known to him, has not appeared before the learned Trial Court and was set exparte. No doubt, he had filed an application before the lower Appellate

Court for marking documents. Thus, at the stage of appeal, the revision petitioner sought to rebut the presumption only on the basis of these four documents, which the revision petitioner ought to have produced before the lower Court and placed his defense.

19.The above said decision of the Hon'ble Supreme Court throws much light on the subject. As such, the area of controversy has become narrower. Adverting to the facts of the present case, in the background of the settled legal propositions and judicial pronouncements, it ought to be observed that recording of additional evidence and marking of documents is absolutely necessary for this case.

20.Considering the materials with reference to documents 1 to 4, I feel, it is just and necessary to direct taking additional evidence in this case and that the request of the petitioner deserves to be entertained. Therefore, the Learned Principal District Sessions Judge at Chennai is hereby directed to take additional evidence and marking of documents as alleged in Petition in Criminal Appeal No.157 of 2014.

21.With the above observations, this Criminal Revision Case is allowed. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

vs

To

The Principal Sessions Judge,
Chennai.

Copy to

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

+1 CC to Mr.B.Gopalakrishnan, Advocate sr 80632.

CrI.R.C.No.1532 of 2017
and

CrI.M.P.No.15348 of 2017

SVN(CO)
SP(19/12/2018)