

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.03.2018

DELIVERED ON : 12.11.2018

CORAM

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Crl.R.C.Nos.767 and 838 of 2017 and 1139 of 2016
and
Crl.M.P.No.7652 of 2017

Selvakumar ... Petitioner
Coimbatore Dt. in Crl.R.C.Nos.767 and
838 of 2017 and
respondent in
Crl.R.C.No.1139 of 2016

vs.

Prabha @ Prabhavathi ... Respondent
in Crl.R.C.Nos.767 and
838 of 2017 and
petitioner in
Crl.R.C.No.1139 of 2016

(*Amended as per order of this court dated 08.12.2016 made
in CRL.MP.13051/16 in CRL RC.1139/16)

Prayer in Crl.R.C.No.767 of 2017: Criminal Revision Case
filed under sections 397(1) and 401 of the Criminal
Procedure Code to set aside the Common Judgment dated
02.06.2016 passed by the learned III Additional District
and Sessions Judge, Cuddalore at Vridhachalam in Criminal
Appeal No.85 of 2015, partly reversing the order dated
26.10.2015 passed by the learned Judicial Magistrate No.2,
Vridhachalam in M.C.No.1 of 2012.

Prayer in Crl.R.C.No.838 of 2017: Criminal Revision Case
filed under sections 397(1) and 401 of the Criminal
Procedure Code against the Common Judgment dated 02.06.2016
passed by the learned III Additional District and Sessions
Judge, Cuddalore at Vridhachalam in Criminal Appeal No.91
of 2015, confirming the order dated 26.10.2015 passed by
the learned Judicial Magistrate No.2, Vridhachalam in
M.C.No.1 of 2012 and prays to set aside the same.

Prayer in Crl.R.C.No.1139 of 2016: Criminal Revision Case
filed under sections 397(1) and 401 of the Criminal
Procedure Code against the judgment passed by the learned

III Additional District and Sessions Judge, Cuddalore at Vridhachalam in Criminal Appeal No.85 of 2015, dated 02.06.2016, by modifying the order made in M.C.No.1 of 2012 dated 26.10.2015 by the learned Judicial Magistrate No.2, Vridhachalam, Cuddalore District, to set aside the same and to enhance the compensation as prayed for in the trial Court to the tune of Rs.75,00,000/-.

For petitioner : Mr.L.Mouli
in Crl.R.C.Nos.
767 and 838/2017
and respondent in
Crl.R.C.No.1139/2016

For respondent : Mr.C.Deivasigamani
in Crl.R.C.Nos.
767 and 838/2017
and petitioner in
Crl.R.C.No.1139/2016

COMMON ORDER

The husband had filed the revisions in Crl.R.C.Nos.767 and 838 of 2017 assailing the common judgment dated 2.6.2016 passed by the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam, in Criminal Appeal Nos.85 and 91 of 2015, whereas the wife filed the revision in Crl.R.C.No.1139 of 2016, assailing the very same judgment dated 2.6.2016 passed in Criminal Appeal No.85 of 2015.

2. The parties are referred to as per their rank in Criminal Appeal No.85 of 2015 before the Court below, i.e., the appellant is wife and the respondent is husband.

3. The facts in a nutshell are as under: The parties to the present litigation got married on 13.12.2007 and during the course of marriage, the respondent husband informed the appellant wife that his first wife died due to cancer and that he is a wealthy person. It is stated that after one year, the appellant came to know about the existence of the first wife of the respondent and on questioning, the respondent joined hands with his first wife and took 40 sovereign jewels and threw the appellant wife out of the house. The appellant wife further stated that she had to give up her government job at the insistence of the respondent husband.

4. As the respondent's parents hated the appellant wife, she lodged a complaint on 7.3.2011 to the All Women Police Station, Vridhachalam, but since the respondent was

residing at Coimbatore, the police authorities advised the appellant to lodge a complaint at Coimbatore. Under such circumstances, the appellant claimed reliefs under Sections 18, 19, 20 and 22 of the Domestic Violence Act.

5. The abovesaid claim was resisted by the respondent by filing counter affidavit and producing documents.

6. The learned Judicial Magistrate II, Vridhachalam, after analyzing the oral and documentary evidence, by order dated 26.10.2015 passed in M.C.No.1 of 2012, partly allowed the petition filed by the appellant by granting a sum of Rs.10,00,000/- as compensation to be payable to the appellant by the respondent, after deducting a sum of Rs.5,00,000/-, which was already paid.

7. Assailing the said order, the appellant filed Crl.A.No.85 of 2015 seeking enhancement of compensation, whereas the respondent filed Crl.A.No.91 of 2015 seeking to set aside the order dated 26.10.2015 passed in M.C.No.1 of 2012 by the learned Judicial Magistrate II, Vridhachalam.

8. The learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam, by judgment dated 2.6.2016, partly allowed Crl.A.No.85 of 2015 filed by the appellant, by enhancing the compensation amount to Rs.15,00,000/- from Rs.10,00,000/- and dismissed Crl.A.No.91 of 2015 filed by the respondent.

9. Assailing the said judgment, Crl.R.C.Nos.767 and 838 of 2017 have been filed by the respondent and Crl.R.C.No.1139 of 2016 has been filed by the appellant.

10. It is the contention of the learned counsel appearing for the respondent husband that without any evidence on record, solely based on the evidence of P.W.1, the Courts below have come to the conclusion that the respondent husband had committed domestic violence as alleged by the appellant and the compensation awarded is exorbitant, considering the fact that the respondent had already executed a settlement deed in favour of the appellant, settling a property worth Rs.36,00,000/-.

11. Per contra, the learned counsel appearing for the appellant wife contended that the Courts below erred in not considering the victimization she was subjected to by the respondent husband and that the appellant wife was forced to resign the government job and she was subjected to violence, which had spoiled her life.

12. I heard Mr.L.Mouli, learned counsel for the petitioner in Crl.R.C.Nos.767 and 838 of 2017 and the respondent in Crl.R.C.No.1139 of 2016 and

Mr.C.Deivasigamani, learned counsel for the respondent in Crl.R.C.Nos.767 and 838 of 2017 and the petitioner in Crl.R.C.No.1139 of 2016 and perused the records.

13. The matrimonial relationship of the appellant wife and the respondent husband is not in dispute. The learned Appellate Court, after referring to the Settlement Deed and various other documents filed on behalf of the parties, categorically recorded the relationship of husband and wife.

14. To establish the fact that the appellant wife worked as Junior Assistant, she produced Ex.A1, the appointment order, appointing her as Junior Assistant in the Kallakurichi Fast Track Court. The appellant also produced the Ousting Order dated 30.7.2008 and marked the same as Ex.P9. It is the specific case of the appellant wife that when gave her first salary to the respondent husband, he threatened her by asking her to opt either the job or life with him. The Courts below categorically held that the said documents relate to the appellant wife.

15. It is the categorical case of the appellant wife that when she questioned the respondent husband regarding the subsistence of his first marriage and the false information given by him that his first wife had passed away, the respondent husband had assaulted her. When the parents and sister of the appellant wife questioned the respondent husband on the same point, the respondent husband threatened them to take back the appellant wife. On an overall consideration of the above said facts, the Courts below, based on evidence, held that the respondent husband made assault, occupational threat and thereby committed domestic violence.

16. That apart, the Courts below found force in the plea of the appellant wife that on 10.7.2010, the respondent husband in cahoots with his first wife snatched 40 sovereign jewels from the appellant wife and sent her out of the home, which forced her to lodge a complaint to the police, and came to the conclusion that the domestic relationship proved the domestic violence made by the respondent husband and, therefore, the appellant wife is entitled to compensation.

17. The Courts below having regard to the financial status of the respondent husband, who was running hotels, real estate business and also having properties, and also the status of the appellant wife, who is a holder of M.Com., and lost service due to the threat of the respondent husband, held that for future maintenance of the appellant wife it is necessary to award compensation of Rs.15 lakhs to the appellant wife. The learned Appellate

Court also took note of the fact that the respondent husband executed a settlement deed in favour of the appellant wife on 9.7.2008. The said fact is not disputed by the appellant wife.

18. As observed by the learned Appellate Court, it is not as if the appellant wife had been appointed in a permanent job. The appointment of the appellant was purely on temporary basis and is not a permanent one. The same is borne out by records. Therefore, the compensation claimed by her, in my considered opinion, is exorbitant. The amount granted as compensation by the learned Appellate Courts is, in my view, justified and does not warrant any interference.

19. In SARASWATHY v. BABU, (2014) 3 SCC 712, relied on by the learned counsel for the appellant wife, the marriage between the parties was solemnized on 17.2.2000. Alleging domestic violence and seeking relief under Sections 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005, a petition was filed. Finding that there was continued violence, it was held by the Hon'ble Apex Court that it is not necessary for the court below to decide whether domestic violence was committed prior to the coming into force of the Act and whether such act falls within the definition of the term "domestic violence" as defined under Section 3 of the Act. The issue considered was, whether the conduct of the parties even prior to the commencement of the Act can be taken into consideration while passing the order under Sections 18, 19 and 20 of the Act. It has been held as follows:

"24. We are of the view that the act of the respondent husband squarely comes within the ambit of Section 3 of the Act, 2005, which defines "domestic violence" in wide terms. The High Court made an apparent error in holding that the conduct of the parties prior to the coming into force of the Act, 2005 cannot be taken into consideration while passing an order. This is a case where the respondent husband has not complied with the order and direction passed by the trial court and the appellate court. He also misleads the Court by giving wrong statement before the High Court in the contempt petition filed by the appellant wife. The appellant wife having being harassed since 2000 is entitled for protection order and residence order under Sections 18 and 19 of the Act, 2005 along with the maintenance as allowed by the trial court under Section 20(1)(d) of the Act, 2005. Apart from these reliefs, she is also entitled for compensation and damages for the injuries,

including mental torture and emotional distress, caused by the acts of domestic violence committed by the respondent husband. Therefore, in addition to the reliefs granted by the courts below, we are of the view that the appellant wife should be compensated by the respondent husband. Hence, the respondent is hereby directed to pay compensation and damages to the extent of Rs.5,00,000/- in favour of the appellant wife."

20. In the case on hand, the learned Appellate Court on an overall consideration of the facts and circumstances, including the assault which the appellant wife suffered and occupational threat, and other clinching factors like a settlement deed already executed by the respondent husband in favour of the appellant wife, had rightly arrived at the compensation to the appellant wife and this Court finds no reason to interfere with the same.

21. In the result, all the criminal revision cases are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs
To

1.The III Additional District and Sessions Judge,
Cuddalore at Vridhachalam.

2.The Judicial Magistrate No.II,
Vridhachalam.

+3cc to Mr.L.Mouli , Advocate SR.No. 77281,77283,77282

+1cc to Mr.C.Deivasigamani , Advocate SR.No. 76985

Crl.R.C.Nos.767 and 838 of 2017 and 1139 of 2016
and

Crl.M.P.No.7652 of 2017

ASK(12/12/2018)