



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE **P.N.PRAKASH****Cr1.R.C. (MD)No.815 of 2017**

Gomathi : Petitioner/Respondent/ Petitioner
Vs.

Chakratis : Respondent/Appellant/ Respondent

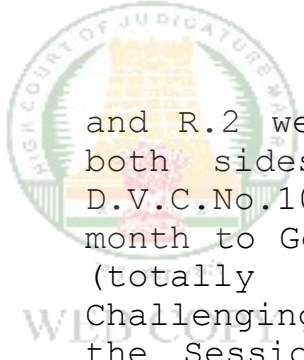
PRAYER: Criminal Revision Case is filed under Sections 397 and 401 of the Criminal Procedure Code praying to call for the records of the impugned order dated 16.08.2017 in C.A.No.15 of 2017 passed by the learned Principal Sessions Judge, Tiruchirappalli Division, Tiruchirappalli in respect of the modification made in the order directing the respondent herein to pay the monthly maintenance to the petitioner and her children from the date of order of the Trial Court and set aside the same and confirm the order dated 29.12.2016 in D.V.C.No.107 of 2016 passed by the learned Judicial Magistrate, Additional Mahila Court, Tiruchirappalli.

For Petitioner : Mr.C.Arul Vadivel Alias Sekar
For Respondent : Mr.S.Rajesh Kanna

ORDER*********

For the sake of convenience, the parties will be referred to by their name.

2. Gomathi got married to Chakratis and they have two children through the wedlock. On account of the matrimonial discord, the couple got estranged resulting in Gomathi being left to fend for herself with her children. Therefore, Gomathi filed S.T.C.No.644 of 2009 before the learned Judicial Magistrate No.VI, Trichy under the provisions of the Protection of Women from Domestic Violence Act, 2005 for various reliefs against Chakratis. On the orders of the learned Chief Judicial Magistrate, S.T.C.No.644 of 2009 was transferred to the learned Judicial Magistrate, Additional Mahila Court, Trichy and was re-numbered as D.V.C.No.107 of 2016. Gomathi examined herself as P.W.1 and her son Prabhakaran was examined as P.W.2. On behalf of Gomathi, Exs.P.1 to P.15 were marked. No witness was examined on behalf of Chakratis, but, however, Exs.R.1



and R.2 were marked. After considering the evidence adduced by both sides, the Trial Court, by order dated 29.12.2016, in D.V.C.No.107 of 2016, directed Chakratis to pay Rs.3,000/- per month to Gomathi and Rs.2,000/- each per month to her two children (totally Rs.7,000/- per month) from the date of petition. Challenging the order, Chakratis filed Crl.A.No.15 of 2017 before the Sessions Court, Trichy, and the learned Principal Sessions Judge, by judgment dated 16.08.2017, has modified the order passed by the Trial Court by holding that the maintenance amount of Rs.7,000/- will be payable only from the date of order of the Trial Court, namely 29.12.2016 and not from the date of petition before the Trial Court, namely 05.12.2008. Challenging this portion of the order, Gomathi is before this Court.

3. Heard Mr.C.Arul Vadivel Alias Sekar, learned counsel for Gomathi and Mr.S.Rajesh Kanna, learned counsel for Chakratis.

4. The learned counsel for Chakratis submitted that the Sessions Court was right in modifying the order, because, the Trial Court has not given any special reason for awarding maintenance from the date of petition, that is 05.12.2008.

5. In support of his contention, the learned counsel placed strong reliance on the judgment of the Supreme Court in **Shail Kumari Devi v. Krishan Bhagwan Pathak [2008 Cri.L.J. 3881] (SC)**.

6. The learned counsel for Chakratis submitted that in the docket order, the Magistrate has not stated that the maintenance amount should be payable from the date of petition, but, has, instead, stated as if the maintenance is payable every month. The learned counsel produced the docket order, which reads as follows:

"U/sec.20 of D.V.Act for maintenance concerned, the respondent is directed to pay a sum of Rs.3,000/- for petitioner and Rs.2,000/- for each children totally Rs.7,000/- to be payable to the petitioner and her children on or before 5th of every month. Finally, the petition is allowed and no cost."

7. Per contra, Mr.C.Arul Vadivel alias Sekar, learned counsel for Gomathi refuted the contentions and placed reliance on the same judgment and relied upon Paragraph No.47 of the judgment, which reads as follows:

"47. We, therefore, hold that while deciding an application under Section 125 of the Code, a Magistrate is required to record reasons for granting or refusing to grant maintenance to wives, children or parents. Such maintenance can be awarded from the date of the order, or, if so ordered, from the date of the application for



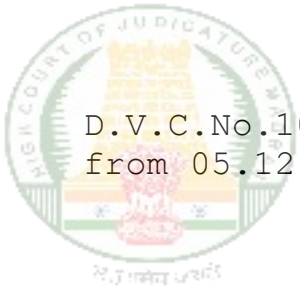
maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary. No special reasons, however, are required to be recorded by the court. In our judgment, no such requirement can be read in sub-section (1) of Section 125 of the Code in absence of express provision to that effect."

8. This Court gave its anxious consideration to the rival submissions.

9. At the outset, this is not a proceedings under Section 125 of the Code of Criminal Procedure and this is a proceedings under the provisions of the Protection of Women from Domestic Violence Act, 2005. The Trial Court order in D.V.C.No.107 of 2016 is a detailed order and it is in Tamil language. However, the docket entry, which, the learned counsel for Chakratis is relying upon, is in English and it is the precis of the detailed order. This Court cannot act on the docket order and can act only on the detailed order, which has been assailed even before the Sessions Court in appeal.

10. In the opinion of this Court, the reason given by the learned appellate Judge for holding that maintenance amount should be paid only from the date of the order of the trial Court is not sustainable. It was open to the appellate Court to have given reasons, if so required, for awarding maintenance from the date of the order. Merely saying that the Trial Court had failed to give reasons for awarding maintenance from the date of petition and, therefore, maintenance has to be paid only from the date of the order of the Trial Court, would amount to shirking judicial responsibility. This Court finds that Gomathi has been fighting this case from 2008 onwards. Her son has got into the witness box and given evidence against Chakratis. The Trial Court has given a finding that it was the mother, who has been taking care of the two children without any help from the father. This finding has not been disturbed by the Sessions Court.

11. As stated above, the provisions of the Protection of Women from Domestic Violence Act, 2005, are not similar to the provisions of Section 125 of the Code of Criminal Procedure. Even, as per the judgment of the Supreme Court, that has been relied upon by the learned counsel for Chakratis, it is clear from Paragraph No.47 that special reasons need not be given. In such view of the matter, the order passed by the Sessions Court, in CrI.A.No.15 of 2017 warrants interference. Accordingly, this Criminal Revision Case is allowed and the order dated 16.08.2017, in CrI.A.No.15 of 2017 passed by the learned Principal Sessions Judge, Trichy, is, hereby, set aside and the order passed by the learned Judicial Magistrate, Additional Mahila Court, Trichy, in



D.V.C.No.107 of 2016 is restored. Chakratis shall pay maintenance from 05.12.2008, as awarded by the Trial Court.

Sd/-

Assistant Registrar(P&A)

WEB COPY/True Copy/

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Tiruchirappalli.
2. The Judicial Magistrate,
Additional Mahila Court,
Tiruchirappalli.

Copy to

The Section Officer, (2 COPIES)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.C.Arul Vadivel Alias Sekar, Advocate Sr.No.58148

SML

VB/JC/SAR3/12.04.2018/4P/6C

Order made in
Cr1.R.C. (MD) No.815 of 2017
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