



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2018

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Cr1.R.C. (MD) No.295 of 2016

Revathi

... Petitioner

Vs.

1.Raja @ Ramachandran

2.Rajamani

3.Vasanthi

4.Swaminathan

... Respondents

PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the order passed in C.A.No.66 of 2014 on the file of the Additional District Judge, Pudukottai, reversing the order passed in Cr1.M.P.No.6028 of 2013 in M.C.No.6 of 2012 on the file of the Judicial Magistrate, Pudukottai and allow this Civil Revision Petition.

For petitioner : Mr.J.Anandkumar

For R1 to R4 : Mr.P.Ganapathi Subramanian

ORDER

Heard the learned counsel for the revision petitioner and the learned counsel for the respondents.

2.This revision petition arising out of the reversal order of the learned Additional District and Sessions Judge, Pudukottai, reversing the order of the learned Judicial Magistrate, Pudukottai, dismissing the petition filed by the revision petitioner / wife under Section 31 of Protection of Women from Domestic Violence Act, 2005, alleging violation of the protection order.

3. In short, the facts are unfold as below:

The petitioner herein Smt.Revathi, who married Raja @ Ramachandran on 01.09.2008, was not able to live with her husband, due to matrimonial discard. Therefore, after exchange of notice and failure of mediation, a petition under Section 31 of Protection of Women from Domestic Violence Act, 2005 has been filed alleging dowry harassment and retention of the Sridhana properties by her husband and his family members. The trial Court has awarded Rs.5,000/- as monthly maintenance for the revision petitioner and her child.



Besides, directed the respondents to return back the sridhana properties withheld by them.

4. Aggrieved by this order, the respondents have preferred appeal before the learned Additional District and Sessions Judge, Pudukottai and the same has been dismissed vide order dated 07.10.2014. Meanwhile, for violation of the protection order, the revision petitioner has filed an application before the State under Section 31 of Protection of Women from Domestic Violence Act, 2005, in which, the trial Court has imposed one year simple imprisonment and a fine of Rs.1,000/-, in default, three months simple imprisonment.

5. On appeal, the learned District and Sessions Judge, Pudukkottai has reversed the order of the Judicial Magistrate, Pudukottai, on the ground that invoking Section 31 of the Protection of Women from Domestic Violence Act, 2005, there must be violation of protection order wherein an order directing the respondent to pay maintenance will not fall under the protection order as specified under Section 18 of the Act. Therefore, Section 31 of the said Act will get attracted.

6. The plain reading of the provisions under Protection of Women from Domestic Violence Act, 2005, does not support the findings of the Appellate Court. Section 31 of the Act, provides remedy for any violation of protection order.

7. Section 18 of the Protection of Women from Domestic Violence Act, 2005, is reads as below:

"18. Protection order:-

The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from -

- (a) committing any act of domestic violence;
- (b) aiding or abetting in the commission of acts of domestic violence;
- (c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- (d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- (d) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or



separately by them without the leave of the Magistrate;

(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

(g) committing any other act as specified in the protection order.

8. For any domestic violence, Court is competent to pass the protection order. When we look into the definition clause of Domestic violence, it includes economic violence also. Economic violence is also defines in Section 3(iv) of the said Act is as follows:

"3.(iv)"economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

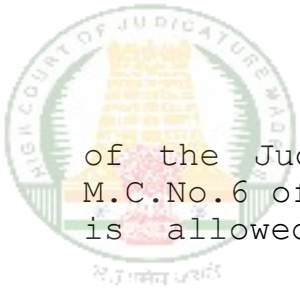
(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household."

9. When there is any person aggrieved in respect of the order in connection with any entitlement under law or payable under the order of the Court, such aggrieved person has to be construed as a person deprived of all or any economic resource which under the inclusive definition is a economic abuse.

10. Thus, non payment of maintenance squarely falls within the definition of domestic violence and therefore on a combined reading of Section 3(iv), 18, 20 and 22 there can be no doubt in the mind of any judicial officer whether an order passed by the Magistrate regarding payment of maintenance or compensation fall within the definition of protection order.

11. This Court finds a grave error in the order of the first Appellate Court. Hence, it is liable to be set aside. Accordingly, the order passed by the Additional District Judge, Pudukottai, in CrI.A.No.66 of 2014 dated 29.01.2016 is hereby set aside. The order



of the Judicial Magistrate passed in Crl.M.P.No.6028 of 2013 in M.C.No.6 of 2012 is hereby restored. and this Criminal Revision Case is allowed.

WEB COPY

Sd/-
Assistant Registrar (WRITS)

/True Copy/

Sub Assistant Registrar (CS-I)

pnn

To:

1.Judicial Magistrate,
Pudukottai.

2.Additional District Judge,
Pudukottai.

+1cc to Mr.J.Anand Kumar, Advocate in SR No.83558

+1cc to Mr.P.Ganapathi Subramanian, Advocate in SR No.84587

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NM/PM/SAR 1/09.10.18/4P/5C