WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.(MD)No.774 of 2017
and
Crl.M.P.(MD)No.9258 of 2017

Rajeswari : Complainant / Respondent / Petitioner

-Vs.-

1.Kiran
2.Sakuntala
3.Rupali : Accused / Petitioners / Respondents

Prayer: Criminal Revision Case is filed under Section 397 Cr.P.C., to set aside the order passed by the Additional District Judge Fast Track Court, Paramakudi, Ramanathapuram District, in Crl.R.P.No.23 of 2015, dated 01.07.2017, in M.C.No.14 of 2014, on the file of the learned Judicial Magistrate, Paramakudi, Ramanathapuram District.

For Petitioner : Mrs.Rajeswari
Party in person
For Respondents : Mr.R.Maheswaran

O R D E R

Today, Rajeswari, the petitioner herein appeared in person and Kiran, the first respondent represented by counsel Mr.R.Maheshwaran, is also present.

2. On 05.01.2018, this Court passed the following order:-

> "Rajeswari got married to Kiran on 03.02.2012 and their matrimonial life ran into rough weather. Pursuant to which, Rajeswari initiated proceedings in M.C.No.14 of 2014, under the Domestic Violence Act, before the learned Judicial Magistrate, Paramakudi, against Kiran, his mother Sakuntala and sister Rupali, seeking for various reliefs. Kiran entered appearance and sought time to file counter. Despite several opportunities given to him, he did not file his counter statement. Therefore, the learned Judicial Magistrate, Paramakudi, recorded the evidence on behalf of Rajeswari and passed an ex parte order, dated 23.06.2015, granting various

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

reliefs to Rajeswari, one of which is that Kiran should pay a sum of Rs.10,000/- (Rupees ten thousand only) per month to Rajeswari towards maintenance.

2. On coming to know about the said order, Kiran and two others filed Cr.M.P.No.1896 of 2015 in M.C.No.14 of 2014, for setting aside the ex parte order, dated 23.06.2015. The learned Judicial Magistrate, Paramakudi, heard the arguments of both sides and by a detailed order, dated 07.09.2015, dismissed the petition. Challenging the same, Kiran filed a criminal revision, in Crl.R.P.No.23 of 2015, before the learned Additional District Judge, Fast Track Court, Paramakudi.

3. From the typed set of papers, it is seen that an order has been passed on 28.07.2016, by Mr.M.P.Ram, M.A., B.L., Additional District Judge, Fast Track Court, Paramakudi, in Crl.R.P.No.23 of 2015, which reads as under:
"Crl.M.P.No.22/16 is dismissed. Appellants absent. Respondent present appeared in person, heard. No counsel represent for appellant, already sufficient time given. Revision dismissed for default, no cost."

4. Thereafter, the very same revision petition, which has been dismissed on 28.07.2016, has been taken up on file on 01.07.2017 and an order has been passed by Mr.K.Guruvaiah, B.Sc., B.L., Additional District and Sessions Judge, Fast Track Court, Paramakudi, allowing the revision and setting aside the ex parte order, dated 23.06.2015.

5. The petitioner, who appeared in person before this Court submitted that she and Kiran were present before the learned Additional District and Sessions Judge, Sangli, in connection with Cr.M.A.No.311 of 2017.

6. Therefore, Registry is directed to call for a report from the learned Additional District and Sessions Judge, Fast Track Court, Paramakudi, as to the circumstances under which final orders were passed in Crl.R.C.No.23 of 2015, on 01.07.2017, when the criminal revision was already dismissed on 28.07.2016.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

7. The learned Additional District and Sessions Judge, Fast Track Court, Paramakudi, is directed to inform Mr.Somasundaram, learned counsel and Mr.D.Sowmiyanarayanan, learned counsels, who appeared for Kiran, about the pendency of the present revision before this Court, so that they can inform Kiran and he can enter appearance before this Court.

8. Similarly, the learned Judicial Magistrate, Paramakudi, is directed to inform Mr.D.Sowmiyanarayanan, learned counsel, who appeared for Kiran and two others in Crl.M.P.No.1896 of 2015 in M.C.No.14 of 2014 about the pendency of this revision before this Court.

9. From the proof affidavit filed by the petitioner, it appears that Kiran, Sakuntala and Rupali are trying to evade the receipt of summons from this Court. Before taking steps to issue warrant against them, this Court deems it fit to inform the learned counsels, who appeared for them before the Courts below, so that they can enter appearance and avoid being brought before this Court in execution of warrant.

10. The above said report shall reach this Court on or before 05.02.2018.

11. Interim order already granted by this Court is extended until further orders."

3. Pursuant to the order dated 05.01.2018, the learned Additional District Judge, Fast Track Court, Paramakudi, Ramanathapuram, has sent a report on 31.01.2018, wherein he has stated as follows:-

"I further submit that CRL R.P.No.23 of 2015 on the file of this Court, the Revisioner petitioner / Respondent not appeared before this Court and hence this Court has passed the order as the Criminal Revision dismissed for default on 28.07.2016. The petitioner has filed a petition to set aside Crl.R.P.No.23 of 2015 on 09.08.2016 and the same numbered as Crl.M.P.No.66 of 2016 and the same was allowed on 07.03.2017 and CRL.R.P.No.23 of 2015 has been restored on the same date and so many opportunities have been given to the Respondent and notices not issued and publication has also been effected.

I further submit that since the Judicial Magistrate Court, Paramakudi has passed exparte order this case was posted on 07.04.2017,

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

12.04.2017, 02.06.2017, 06.06.2017 and on 08.06.2017, 14.06.2017 for appearance of respondent but she has not appeared before this Court and hence this Court has passed the order on merits on 01.07.2017 and the order passed in M.C.No.14 of 2014 dated 23.06.2015 was set aside on condition that the revision petitioner should pay the cost of Rs.5,000/- and monthly maintenance amount Rs.10,000/- per month each, in total, Rs.2,40,000/- and in the said amount 1/3rd of Rs.80,000/- should be deposited in Paramakudi Judicial Magistrate Court, Paramakudi in M.C.No.14 of 2014 and directed the learned Judicial Magistrate, Paramakudi shall dispose this case within two months after hearing both sides. In the meantime, the petitioner has filed a petition on 10.08.2017 and numbered as Crl.M.P.No.716 of 2017 prays to set aside the order passed in Crl.R.P.No.23 of 2015 dated 01.07.2017 and the same is pending before the Additional District and Sessions Court, Paramakudi. On 11.08.2017, the petitioner has filed another petition in Crl.M.P.No.731 of 2017 in CRL.R.P.No.23 of 2015 prays to stay the order passed in CRL.R.P.No.23 of 2015 dated 01.07.2017 and the same is also pending. The petitioner namely Rajeswari has filed a petition to withdraw the cost and maintenance amount both petitions are pending before the learned Judicial Magistrate Court, Paramakudi without numbering."

4. From a reading of the above report, it is not clear as to whether notice was served in Crl.M.P.No.66 of 2016 on Rajeswari. The report is silent on this aspect. The fact remains that Kiran had not appeared before the learned Judicial Magistrate, Paramakudi, despite several opportunities and on account of his non-appearance, he had to suffer the order in M.C.No.14 of 2014, dated 23.06.2015. Pursuant to the order in M.C.No.14 of 2014, dated 23.06.2015, Rajeswari took steps to have the order executed at Sangli, Maharashtra, for attachment of the properties of Kiran. The District Collector, Sangli, Maharashtra, has sent a report dated 06.01.2017 to the learned Judicial Magistrate, Paramakudi, which reads as under:-

"We have received order dated 19/05/2016. As per that order an amount of Rs.2,00,000/- to be recovered from Mr.Kiran Vilas Shinde, resident of Tasgaon. The said amount is to be recovered towards maintenance and compensation. Instruction given to Tahsildar Tasgaon, he has recovered an amount of Rs.72,800/- after auction of movable property of Mr.Kiran Vilas Shinde.

https://hcservices.ecourts.gov.in/hcservices/Again order dated 01/08/2016 passed by this Hon'ble Court in M.C.No.14 of 2014 was

WEB COPY

received by my office. As per the said order, this Hon'ble Court has directed to recover arrears of maintenance of Rs.23,03.300/- from Mr.Kiran Vilas Shinde.

Again, instruction were given to Tahsildar Tasgaon and Vita. Auction was announced of property no.913(old no.878-2) by Tahsildar Tasgaon. Nobody responded. The property was attached and possession was handover to the complainant. Valuation of the property no.913 is Rs.9,57,957/- (Rupees Nine Lakh Fifty Seven Thousand Nine Hundred Fifty Seven only).

Tahsildra Via announced auction of property Gat nos./Grampanchyat property nos.373, 375, 383 and 686. Nobody responded in auction. Grampanchyat property no.686 is only in the name of Mr.Kiran Vilas Shinde. So the same was attached and possession was handover to the complainant. Name of complainant was also entered to ownership coloumn.

We have recovered total amount of Rs.11,83,163/- through auction of movable property as well as transferring the house property and landed property in the name of Rajeshwari Jadhav. We have informed and instructed the concerned officers to recover balance amount of Rs.13,20,137/- by searching other properties in the name of Mr.Kiran Vilas Shinde. We have requested the complainant to inform about other landed properties which are in the name of Mr.Kiran Vilas Shinde if she found. We assured to do the needful to the best of our ability.

These facts are reported for information and necessary action."

5. Thus, from a reading of the above report, it appears that Rajeswari is in possession of certain movable and immovable properties valued at Rs.11,83,163/- (Rupees Eleven Lakhs Eighty Three Thousand and One Sixty Three Rupees only).

6. Pursuant to the distress warrant issued by the learned Judicial Magistrate, Paramakudi, Kiran was arrested by the Maharashtra police on 22.07.2017 and he was produced before the learned Judicial Magistrate, Paramakudi, on 27.07.2017. At the time of his production before the learned Judicial Magistrate, Paramakudi, it was brought to the notice of the Court that the order passed by the Magistrate in M.C.No.14 of 2014, dated 23.06.2015, has been set aside by the learned Additional District and Sessions Judge, Fast Track Court, Paramakudi in Crl.R.P.No.23 of 2015 on 01.07.2017 and therefore, Kiran was released.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

7. Thus, from a conspectus of the facts obtaining in this case, it is seen that Rajeswari has not been heard in full in Crl.R.P.No.23 of 2015 and therefore, an opportunity should be given to her for presenting her case.

8. In the result, this Criminal Revision Case is allowed and the order dated 01.07.2017 made in Crl.R.P.No.23 of 2015 passed by the learned Additional District and Sessions Judge, Fast Track Court, Paramakudi, is hereby set aside.

9. In the opinion of this Court, it will serve the interest of justice, if Crl.R.P.No.23 of 2015 is heard by the learned Principal District Judge, Ramanathapuram, instead of the learned Additional District and Sessions Judge, Paramakudi. The learned Additional District and Sessions Judge, Paramakudi, is directed to transfer all the records in Crl.R.P.No.23 of 2015 to the file of the learned Principal District Judge, Ramanathapuram. Both the parties are directed to appear before the learned Principal District Judge, Ramanathapuram, on 02.04.2018, [Monday], at 10.30 a.m.. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To:

1. The Principal District Judge,
   Ramanathapuram District.

2. The Additional District and Sessions Judge,
   Paramakudi,
   Ramanathapuram District.

3.The Judicial Magistrate, Paramakudi,
   Ramanathapram District.

+1cc to M/S.M.S.Jeyakarthik, Advocate SR.No. 51529

Order made in
Crl.R.C.(MD)No.774 of 2017
26.02.2018

sm
JM/SKN RSK/SAR 3/08.03.2018/6P/5C

https://hcservices.ecourts.gov.in/hcservices/