

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.31 of 2019
and
Crl.M.P.Nos.264 & 265 of 2019

Varalakshmi

.. Petitioner

Vs.

Selvam

.. Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C. Praying to set aside the order dated 04.12.2018 passed by the III Additional Session Juge, (FAC) Puducherry in Criminal Appeal No.38 of 2018 and to restore the order dated 15.05.2018 in Crl.M.P.No.1811 of 2017 in D.V.C.No.2 of 2017 on the file of the Judicial Magistrate-III, Puducherry.

For Petitioner : Mr.R.Sreedhar
For Respondent : Mr.K.Govi Ganesan

O R D E R

This Criminal Revision case has been filed to set aside the order dated 04.12.2018 passed by the III Additional Session Juge, (FAC) Puducherry in Criminal Appeal No.38 of 2018 and to set aside the order dated 15.05.2018 in Crl.MP.No.1811 of 2017 in D.V.C.No.2 of 2017 on the file of the Judicial Magistrate-III, Puducherry.

2. The revision petitioner is the wife and the respondent is the husband. The revision petitioner/wife filed a complaint before the learned Judicial Magistrate No.III, Puducherry in D.V.C.No.02 of 2017. During the pendency of the complaint, the revision petitioner/wife filed Crl.M.P.No.1811 of 2017 for interim maintenance. The learned Magistrate allowed the interim maintenance on 15.05.2018 and directed the respondent/husband to pay a sum of Rs.5,000/- per month towards monthly maintenance, as against the said order, the respondent/husband filed an appeal in Crl.A.No.38 of 2018 before the learned III Additional Sessions Judge (FAC), Puducherry. After hearing the arguments, the learned Sessions Judge allowed the appeal on 04.12.2018 by

setting aside the order passed by the trial Court. There against, the wife has filed the present revision.

3. The learned counsel for the petitioner would submit that the marriage between the petitioner and the respondent was solemnised on 02.09.2013. Due to misunderstanding between the parties and also the cruel treatment made by the respondent/husband, she left the matrimonial home. Thereafter, she filed a petition for divorce in HMOP.No.310 of 2016 on the ground of desertion and cruelty. The ex-parte order was passed and divorce was granted on 15.09.2016. Thereafter, the revision petitioner/wife filed a petition under Domestic Violence Act on 28.11.2016. Though the learned Magistrate granted interim maintenance, the Appellate Court reversed the order on the ground that there is no relationship in subsistence between the parties and also by citing the decision of the Supreme Court. The citation referred to by the Hon'ble Apex Court is not applicable in the present case as the wife therein admitted that the divorce is on mutual consent, she cannot say that there was Domestic Violence. In this case, there is no mutual consent. The decisions of the Supreme Court in cases of (i) Krishna Bhattacharjee Vs. Sarathi Choudhury and another case and (ii) Inderjit Singh Grewal Vs. State of Punjab and another refers that even after divorce, wife can file a petition under Domestic Violence Act and the same is maintainable. However, the same was decided in the miscellaneous petition not in the main petition. In the circumstances, the decision of the lower Appellate Court warrants interference.

4. The learned counsel for the respondent would submit that the husband has not filed any petition to set aside the ex-parte decree. The petition under Domestic Violence Act has been filed on 28.11.2016 and on the date of filing the petition, there was no relationship between the petitioner and the respondent. Hence, the petition under Domestic Violence Act is not maintainable. The learned Sessions Judge cited the authority of the Apex Court in Inderjit Singh's case (cited supra) and rightly held that after divorce, the petition filed under Domestic Violence Act is not maintainable. There is no reason to interfere with order passed by the Appellate Court.

5. Heard the learned counsel for the petitioner, the learned counsel for the respondent and also perused the materials on record.

6. Admittedly, the marriage between the petitioner and the respondent was solemnised on 02.09.2013. The petitioner/wife filed the petition for divorce in HMOP.No.310 of 2016 on the ground of desertion and cruelty. The ex-parte order was passed and the divorce was granted on 15.09.2016. Thereafter, the revision petitioner/wife filed the petition in Crl.M.P.No.1811

of 2017 under Domestic Violence Act on 28.11.2016. There against, the husband preferred the appeal in Crl.A.No.38 of 2018 before the learned III Additional Sessions Judge, FAC, Puducherry. Though the learned Magistrate granted interim maintenance, the Appellate Court reversed the order on the ground that there is no relationship of husband and wife between the parties. Admittedly, the respondent/husband has not filed any petition for setting aside the ex-parte order of divorce passed by the Family Court, Puducherry. During the pendency of the complaint, the revision petitioner/wife filed Crl.M.P.No.1811 of 2017 for interim maintenance. The learned Magistrate allowed the interim maintenance on 15.05.2018 and directed the respondent/husband to pay a sum of Rs.5,000/- per month towards monthly maintenance, as against the said order, the respondent/husband filed the appeal in Crl.A.No.38 of 2018 before the learned III Additional Sessions Judge (FAC), Puducherry. The learned Sessions Judge, while dealing with the appeal, found that the revision petitioner/wife already got divorce on the date of filing the complaint under Section 12 of the Domestic Violence Act and therefore, the complaint under Domestic Violence Act is not maintainable. Once the marriage is admitted and the decree of divorce is admitted, even the divorced wife is also entitled to file a petition under Domestic Violence Act. Hence, the finding given by the Appellate Court is perverse.

7. This Criminal Revision is allowed. The order dated 04.12.2018 made in Crl.A.No.38 of 2018 passed by the learned III Additional Sessions Judge (FAC), Puducherry is set aside. The learned Judicial Magistrate-III, Puducherry is directed to dispose of the D.V.C.No.02 of 2017 on merit and in accordance with law, within a period of three months from the date of receipt of a copy of this order. The respondent/husband is directed to pay the interim maintenance of Rs.5,000/- per month as directed by the learned Judicial Magistrate-III, Puducherry in Crl.M.P.No.1811 of 2017. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

kmi

To

1.The III Additional Sessions Judge,
FAC, Puducherry.

2.The Judicial Magistrate-III,
Puducherry.

+1cc to Mr.R.Sreedhar, Advocate SR.35441
+1cc to Mr.K.Govi Ganesan, Advocate SR.35679

Cr1.R.C.No.31 of 2019

PA (CO)
CB(11/10/2019)



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