

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1036 of 2018
and
Crl.M.P.No.12184 of 2018

Pushkala

....Petitioner/Petitioner

Vs.

1. Ambika

2. K. Suresh

....Respondents/Respondents

The Criminal Revision Case filed under Section 397 read with 401 of Code of Criminal Procedure to call for the records and set aside the order passed in C.M.P.No.925 of 2018 in D.V.No.8 of 2018 dated 07.07.2018 on the file of the learned Judicial Magistrate-II, Kanchipuram.

For Petitioner : Mr.I.Abrar MD Abdullah

O R D E R

This Criminal Revision Case has been filed to call for the records and set aside the order passed in C.M.P.No.925 of 2018 in D.V.No.8 of 2018 dated 07.07.2018 on the file of the learned Judicial Magistrate-II, Kanchipuram.

2. The Revision Petitioner has filed a petition in D.V.No.8 of 2018 on the file of the learned Judicial Magistrate-II, Kanchipuram. During the pendency of the case in D.V.No.8 of 2016, the petitioner has filed a petition to permit her father to appear before the Court on behalf of her as power agent and proceed with the case further. The same was partly allowed by the trial Court and a direction issued to the petitioner that she has to necessarily appear before the trial Court and give an evidence.

3. Aggrieved with directions passed by the learned Judicial Magistrate-II, Kanchipuram, the petitioner has filed the present revision.

4. Despite notice being served on the respondents and their names were also printed in the cause list, none appeared on behalf of the respondents to raise any objection.

5. The learned counsel for the petitioner would submit that the petitioner filed a petition to permit her father to appear before the Court on behalf of her as power agent. That petition was partly allowed and a direction was issued by the Magistrate that the petitioner has to necessarily appear before the Court and give evidence.

6. The prayer sought for to issue summons to the respondents and conduct an enquiry as provided under the Protection of Women from Domestic Violence Act, 2005 and grant the following reliefs as provided under the above said Act:-

'a. The respondents may be directed to handover all the streethana articles more fully described under the schedule below, given as dowry at the time of marriage of this petitioner with the elder son of the first respondent immediately under Section 19(8); failing which the same may be seized from the custody of the respondents with the help of police under Section 19(7) of the Protection of Women from Domestic Violence Act and handover the same to this petitioner;

b. directing the respondents to pay a sum of Rs.10,00,000/- cash as damages for the ill treatment caused by the respondents to the petitioner and a decree may be passed for the same with a future interest at the rate of 12% per annum infavour of the petitioner against the respondents under Section 12 (1)(2) read with 22 of the Protection of Women from Domestic Violence Act;

c. directing the respondents to pay a sum of Rs.15,00,000/- as damages towards the marriage expenses incurred by the petitioner's father for the marriage of the petitioner with a future interest at the rate of 12% per annum infavour of the petitioner against the respondents under Section 20(1)(2) of the Protection of Women from Domestic Violence Act;

d. directing the respondents to arrange for an alternate accommodation for the petitioner as she was lived in the conjugal home during the life time of her husband or to pay rent for the same 19(1)(f);

e. An order of injunction restraining the respondents and their men from making any attempt to communicate in any form, whatsoever with the petitioner, including personal, oral or written or electronic or telephonic contact, till the final disposal of this petition as provided under Section 18(d) of the Protection of Women from Domestic Violence Act and direct the police to give her protection if necessary as provided under Section 19 (7) of the said Act to implement the order of this Hon'ble Court;

f. to pass such or other orders as may be deemed fit in the circumstances of the case;

g. to award a sum of Rs.1,00,000/- to this petitioner to meet out the litigation expenses as costs of this petition and render justice."

7. The main contention of the revision petitioner is that she could not appear before the Court and proceed with the case. Therefore, she had filed a petition before the trial Court to appoint her father as power agent to proceed with her case. The trial Court has also partly allowed the petition. Further, the petitioner would submit that her father is capable person to represent the case on behalf of her and he had knowledge about the streedhana articles and jewels.

8. On a reading of the complaint given by the petitioner before the learned Judicial Magistrate, it is seen that the prayer was not only the return of streedhana articles and damages for the articles, but also damages for ill-treatment caused by the respondents to the petitioner. This Court finds that ill-treatment suffered by the petitioner should be explained only by her by entering into the witness box and her father cannot depose on her behalf with regard to the ill-treatment and suffering faced by her at the hands of her husband and in-laws. Therefore, this Court does not find any illegality or infirmity in the order passed by the Court below. Further, the direction issued by the learned Magistrate that the petitioner has to appear before the Court and give evidence does not warrant any interference.

9. However, if the petitioner is not pressing the relief sought for in clause(b) mentioned in para 6 herein above, the Magistrate need not insist the petitioner, to appear and give evidence, otherwise she has to necessarily appear before the trial Court and give evidence regarding her personal knowledge.

10. With the above observation, the Criminal Revision is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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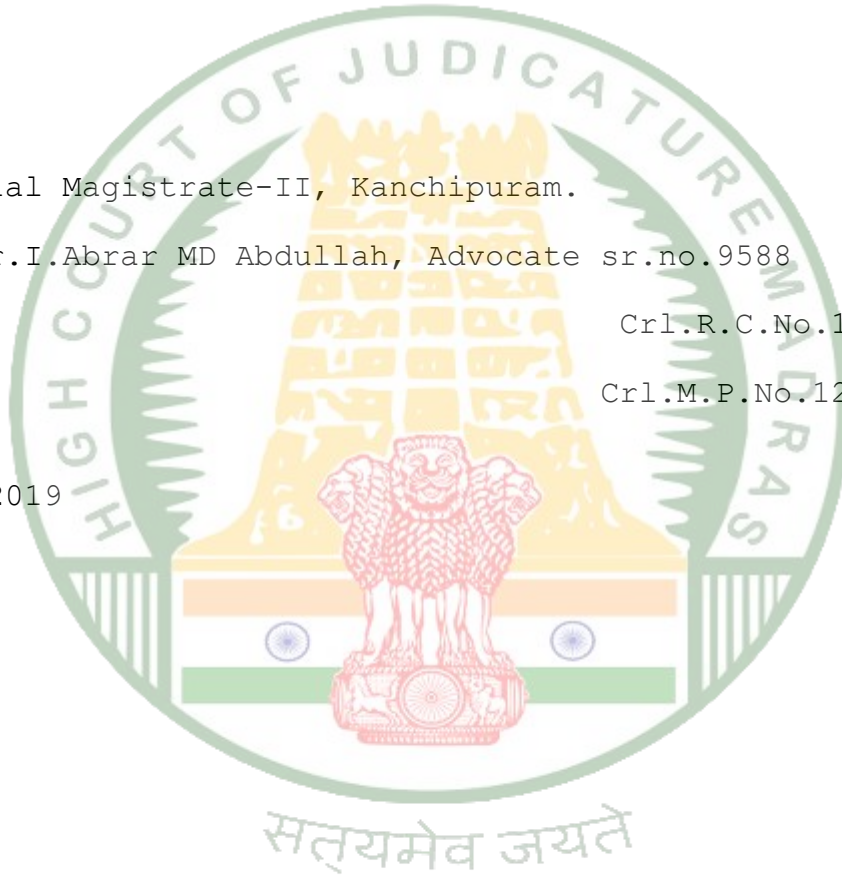
To

The Judicial Magistrate-II, Kanchipuram.

+1cc to Mr.I.Abrar MD Abdullah, Advocate sr.no.9588

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