

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.01.2019

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

CRL. R.C. NO. 1288 OF 2011

Mykumaran

.. Petitioner

- Vs -

Yasotha

.. Respondent

Criminal Revision Petition filed under Section 397 r/w 401 of the Code of Criminal Procedure, against the judgment dated 11.8.11 passed by the District & Sessions Court, Tiruvallur, made in C.A. No.88 of 2010 confirming the order passed by the Judicial Magistrate No.I, Poonamallee in C.M. P. No.3936/09 dated 13.9.09.

For Petitioner : Mr.H.Manojin

For Respondent : Mr. S.Sabastin

ORDER

The present criminal revision has been preferred against the judgment dated 11.8.11 passed by the District & Sessions Court, Tiruvallur, made in C.A. No.88 of 2010 confirming the order passed by the Judicial Magistrate No.I, Poonamallee in C.M. P. No.3936/09 dated 13.9.09.

2. For the sake of convenience, the parties will be referred to Yasotha and Mykumaran.

3. Yasotha is the younger sister of Mykumaran and she was living with her parents at No.101-B, Ramakrishna Nagar, Porur and was doing small-time tailoring job. Mykumaran got married and was living separately. Mykumaran approached his parents and sought permission to temporarily stay in the portion where Yasotha was having her tailoring machine. The parents of Mykumaran permitted him to stay, but he started harassing Yasotha to such an extent that her continuation in the house became an impossibility. Hence, Yasotha lodged a complaint with the Protection Officer against Mykumaran and an enquiry was conducted by the Protection Officer. Thereafter, the Protection Officer submitted the Domestic Incident Report to the concerned Judicial Magistrate and Yasotha initiated proceedings under the

Domestic Violence Act in C.M.P. No.3936/09 before the Judicial Magistrate No.I, Poonamallee, claiming various reliefs, including the relief of compensation and right of residence against Mykumaran.

4. During trial, Yashotha examined herself as P.W.1 besides examining P.W.s 2 to 6 and marked 12 exhibits (Exs.P-1 to P-12). On the side of Mykumaran, 4 witnesses (R.W.s 1 to 4) were examined and 10 documents (Exs.R-1 to R-10) were marked. The Judicial Magistrate No.I, Poonamallee, by order dated 13.9.10 gave residence order in favour of Yasotha and also awarded compensation of Rs.1 Lakh for the loss of earnings and for mental agony.

5. Challenging the order passed by the Judicial Magistrate, Mykumaran preferred C.A. No.88/10 before the Court of Session, Tiruvallur, and the same was dismissed on 11.8.11 against which Mykumaran has preferred this revision u/w 397 r/w 401 Cr.P.C.

6. Heard Mr.H.Manojin, learned counsel for the revision petitioner and Mr.Sabastin, learned counsel for the respondent.

7. Mr.Manojin, learned counsel for the revision petitioner submitted that Yasotha was in love with a boy while she was studying and she ran away with him and it was Mykumaran, who brought her back. He also contended that Yasotha was setup by his father to file the proceedings under the Domestic Violence Act in order to illegally evict Mykumaran.

8. Per contra, Mr.Sabastin, learned counsel appearing for the respondent refuted the contentions.

9. This Court gave its anxious consideration to the rival submissions and also perused the materials available on record.

10. While dealing with a revision petition under Section 397 r/w 401 Cr.P.C., this Court cannot re-appreciate the evidence, as if it is a Court of second appeal. In this regard, it is profitable to allude to the following paragraphs in the judgment of the Supreme Court in State of Maharashtra Vs Jagmohan Singh Kuldip Singh Anand and Others, etc. [(2004) 7 SCC 659.]

"22.The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions

Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

“for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court”.

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

(emphasis supplied)

23. On this aspect, it is sufficient to refer to and rely on the decision of this Court in *Duli Chand v. Delhi Admn.* [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 : AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

“The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse.”

11. If it is shown that the Courts below have overlooked any material piece of evidence, which would have otherwise turned the tables in favour of the petitioner or had grossly misappreciated the evidence, then, it is open to this Court to reappraise the same.

12. On a perusal of the evidence of the witnesses, it is clear that Yasotha was doing some odd tailoring works in a portion of the premises at No.101-B, Ramakrishna Nagar, Porur, and was living along with her parents. It is may nbe true that when Yasotha was studying in school, she loved a boy and ran

away with him. It may equally be true that it was Mykumaran, who brought her back. But that cannot give a free hand to Mykumaran to forcibly evict Yasotha from the premises. Both the courts below have found that Mykumaran and his family were not residing in No.101-B, Ramakrishna Nagar, Porur, and were residing elsewhere.

13. That apart, in the enquiry conducted by the Protection Officer, who was examined as P.W.6, Mykumaran admitted that Yasotha's articles were kept outside the house by his (Mykumaran's) wife. The witnesses have also stated that Mykumaran burnt the articles of Yasotha. In fact, the Sub Inspector of Police has sent a letter to the Protection Officer (P.W.6) with regard to the violence perpetrated by Mykumaran on Yasotha.

14. In the teeth of such overwhelming materials, this Court does not find any reason to interfere with the well considered order passed by the Courts below. However, this court is of the view that the compensation amount awarded at Rs.1 Lakh could be reduced to Rs.75,000/-.

15. For the reasons aforesaid, this revision petition is devoid of merits and liable to be dismissed and, accordingly the same is dismissed, however, modifying the compensation awarded at Rs.1 Lakh to Rs.75,000/-. However, there shall be no order as to costs.

s/d-

Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

GLN

To

1. The District & Sessions Court
Tiruvallur.

2. The Judicial Magistrate No.I
Poonamallee.

+1 CC to Mr.P.V. Rajeswari, Advocate sr 5555.

CRL. R.C. NO.1288 OF 2011

VSNI (CO)
SP(20/02/2019)