

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.152 of 2018 and
Crl.M.P.No.1235 of 2018

P.Kalpana

...Petitioner

-Vs-

1. R.Saravanan @ Arumugam
2. R.Vijayalakshmi
3. Yasodha
4. S.Mariappan
5. Mani @ Devamanokari
6. M.Senthilmurugan
7. G.Arumugam
8. Veni @ Krishnaveni

...Respondents

Criminal Revision Petition filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the order passed in C.A.No.70 of 2016, dated 08.12.2017 on the file of the I Additional District and Sessions Judge, Erode, whereby confirming the order passed in M.C.No.2 of 2015, dated 02.02.2016 on the file of the learned Chief Judicial Magistrate, Erode, Erode District.

For Petitioner : Mr.R.Hemalatha
For Respondents : Mr.R.Rajarajan

O R D E R

The petitioner is wife, 1st respondent is husband and respondents 2 to 8 are relatives. The petitioner/wife has filed a case under Domestic Violence Act before the learned Chief Judicial Magistrate, Erode. The learned Magistrate, by order dated 02.02.2016 dismissed the case, against which the petitioner has filed an appeal before the learned I Additional District and Sessions Judge, in C.A.No.70 of 2016 and the learned Sessions Judge, by judgment dated 08.12.2017, dismissed the appeal by confirming the findings of the Magistrate. Aggrieved against the said judgment, the wife has preferred the present revision before this Court.

2 The learned counsel for the petitioner/wife would submit that the petitioner lodged complaints against the respondents before jurisdictional Police Station and the documents pertaining to the above complaints will show that the petitioner lived with the first respondent till 2010 and in such event, the petitioner was subjected to domestic violence by the respondents. The petitioner is always ready to live with the first respondent and he only filed petition seeking divorce in H.M.O.P.No.1331 of 2010. The Courts below have failed to consider the above aspects and erroneously dismissed the petition filed by the petitioner.

3 The learned counsel appearing for the respondents would submit that the petitioner has already got back her sridhana articles and has also filed a maintenance case and the same was also ordered by awarding maintenance at Rs.5000/- p.m. Hence the petitioner is not entitled for any relief as sought for by her. Both the Courts below have rightly given findings for dismissing the petition filed by the petitioner.

4 Heard the learned counsel appearing on either side and perused the materials available on record.

5 It is seen that the petitioner/wife has initiated domestic violence proceedings against the respondents and the same was dismissed by the learned Chief Judicial Magistrate, Erode, on the ground that the petitioner had already got back sridhana articles and the allegations of domestic violence against the respondents have not been proved. Against which, she filed an appeal and the lower appellate Court also dismissed the appeal by confirming the dismissal order of the learned Magistrate. It is the main contention of the learned counsel for the petitioner that she is always ready and willing to live with the first respondent, but the first respondent has filed a petition seeking divorce. It is an admitted fact that the first respondent has studied only 7th std., and the petitioner is a B.Com. Graduate. The petitioner/wife has not produced any piece of evidence proving the allegations levelled against the respondents. Both the Courts below have given concurrent finding that the petitioner has not proved the case of domestic violence, in which this Court does not find any reason to take a different view. As far as maintenance is concerned, the petitioner/wife can file a petition under Section 24 of Hindu Marriage Act in the divorce proceedings in H.M.O.P.No.1331 of 2010 pending before the Family Court, if she so desire.

6 With the above observations, this criminal revision case is dismissed. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional District and Sessions Judge, Erode.
2. The Chief Judicial Magistrate, Erode, Erode District.

+1cc to Mr.R.Rajarajan , Advocate SR.No. 28379

+1cc to Mr.C.Prakasam , Advocate SR.No. 28456

CrI.R.C.No.152 of 2018 and
CrI.M.P.No.1235 of 2018

A.SK(04/12/2019)



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