

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.325 of 2012
and M.P.No.1 of 2012

1.Manivannan
2.Elangumani
3.Kamalam
4.Jayanthi

... Petitioners

Vs.

Hemalatha

.... Respondent

Prayer: Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to set aside the order dated 10.12.2011 in C.A.No.77 of 2011 on the file of the Court of Additional Sessions Judge (Fast Track Court II) at Gopichettipalayam confirming the trial court order dated 13.05.2011 in CC.NO.01/11 on the file of the Court of the J.M.Court No.2, Gopichettipalayam.

For Petitioners : Ms.R.T.Shyamala
For Respondent : No appearance

O R D E R

The Criminal Revision Case has been filed by the petitioners seeking to set aside the order in C.A.No.77 of 2011, passed by the learned Additional Sessions Judge (Fast Track Court II), Gopichettipalayam, dated 10.12.2011.

2. Hemalatha the respondent herein has initiated the proceedings against her husband Manivannan and in-laws alleging that she is subjected to domestic violence and forcing her to do all the household work like a house maid. Further, it was alleged that on 08.11.2009, her husband assaulted her brutally. she was forced to leave the marital home and live separately. On 31.12.2009, her house was broke open by the petitioners herein and all her household articles were thrown to street. Therefore, she has sought for the return of her Sridhana articles and cash of Rs.1,50,000/- given during the marriage and also maintenance of Rs.3000/- per month or Rs.7,00,000/- in lump sum. Her petition filed under Domestic Violence Act was contested by her husband and in-laws denying the allegations and also brought to notice of the Court that of H.M.O.P.No.24 of 2010 filed by the petitioner Hemalatha for the restitution on conjugal rights is pending.

3. After considering the rival submissions and the evidence placed by the respective parties, the learned Judicial Magistrate No.II, Gopichettipalayam has allowed the petition filed by Hemalatha. The Court directing the petitioners herein to return back the Sridharna articles and cash of Rs.1,50,000/- to Hemalatha and also directed her husband Manivannan the first petitioner herein to pay maintenance of Rs.2,500/- per month. Aggrieved by the order passed by the trial Court in C.C.No.1 of 2011, appeal before the learned Additional Sessions Judge (FTC-II), Gobichettipalayam in C.A.No.77 of 2011 was preferred. The lower appellate Court confirmed the order of the trial Court. Aggrieved by that, the present revision petition is filed by petitioners who were the respondents 1 to 4 in C.C.No.1 of 2011.

4. Despite notice, Hemalatha/petitioner in C.C.No.1 of 2011 has not entered appearance.

5. Heard the learned counsel for the revision petitioner.

6. The learned counsel appearing for the revision petitioner would submit that the trial Court has not properly understood the spirit of Domestic Violence Act and without following the provisions contemplated under the Act, has proceeded with the enquiry and passed an order without the report of Protection Officer. When no case of domestic violence has been made out by the petitioner Hemalatha, the trial Court ought not to have proceeded further under the Domestic Violence Act. When there is no material to show that the petitioner's family gave Sridhanam during the marriage, particularly jewels mentioned in the petition and cash of Rs.1,50,000/-, merely based on the oral allegations, the trial Court has ordered to return the jewels and cash.

7. The learned counsel for the petitioner would submit that the Courts below have failed to consider that the age of the petitioners 2 and 3 herein. They both are more than 80 years old and they are no way connected with the alleged domestic violence. As far as the fourth petitioner Jayanthi is concerned, she is the married sister of the first petitioner. She lives far away from the matrimonial home of the first petitioner. Further, the learned counsel would also submit that subsequent to this impugned order passed by the Courts below, the first petitioner has preferred H.M.O.P.No.1373 of 2014 on the file of the Principal Family Court, Coimbatore seeking dissolution of marriage. The Family Court has granted divorce vide order dated 11.08.2015, which has reached finality. In the said circumstances, the impugned order is liable to be set aside.

8. As far as the fact regarding the dissolution of marriage, which has taken place subsequent to the impugned

order, the respondent Hemalatha despite notice is not before this Court to confirm or dispute.

9. The perusal of the impugned order which is under challenge, the facts which are admitted by the parties is that, on 12.08.2008 Hemalatha and Manivannan were married as per Hindu Customs and Rite at Gobichettipalayam. The petitioner Hemalatha has alleged that during the marriage, jewels and cash of Rs.1,50,000/- was given to the bridegroom family. However, from the documents relied by the petitioner there is no material to substantiate the said claim. The Courts below have wholly relied upon the evidence of PW.1 to PW.3 who are the interested witnesses and close relatives of Hemalatha. Apart from that the structure of the Protection of Women from Domestic Violence Act, contemplates protection order as interim measure. It also emphasizes upon the report of Protection Officer to assist the Magistrate in discharging this function under the Act.

10. In this case, as pointed out by the learned counsel for the revision petitioners no attempt has been made by the learned Magistrate to get the assistance of the Protection Officer to verify the veracity of the complaint. There is no material placed by Hemalatha to substantiate her complaint regarding physical abuse or deprivation of economic resources. In such circumstances, the impugned order directing the respondent/revision petitioner herein to return the jewels and cash claimed by Hemalatha is unsustainable. Therefore, due to the infirmity in the order of the Courts below and absence of Protection Officer's report to prove the alleged domestic violence, the revision petitioner deserves to be allowed.

11. Accordingly, the Criminal Revision case stands allowed. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional Sessions Judge (Fast Track Court II),
Gopichettipalayam
 - 2.The Judicial Magistrate No.2, Gopichettipalayam
 - 3.The Chief Judicial Magistrate, Erode.
 - 4.The Section Officer,
Criminal Section, High Court, Madras.
- +1cc to Ms.R.T.Shyamala, Advocate SR.No. 19198

CrI.R.C.No.325 of 2012