

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2019

CORAM:

THE HONOURABLE DR.JUSTICE G. JAYACHANDRAN

Criminal Revision Case No.373 of 2012
and M.P.1 & 2/2012.

1.R.Ravi Kumar

2.Jaggubai ... Petitioners/Respondents

/versus/

Saraswathi ... Respondent/Petitioner

Criminal Revision Case has been filed under Section 397 r/w 401 of the Criminal Procedure Code praying to revise and set aside the order allowing the I.A.No.3861 of 2011 in C.C.No.2988 of 2011 impleading the second petitioner as a necessary party on 07.02.2012.

For Petitioners :Mr.F.Camilus Selva for
M/s S.Xavier Felix

For Respondent : M/s.NA.Thara

O R D E R

The revision petitioners herein are the husband and mother-in-law of the respondent Saraswathi. Pending the revision petition, her husband died. It appears that the mother-in-law, who is the second revision petitioner, nearly 86 years old is present and agitating the revision petition.

2. The grievance of the revision petitioners is that the respondent herein has filed a petition under Domestic Violence Act, 2005 alleging that she has been deprived of her protection by her husband and in-laws. After investigation, the Protection Officer has submitted a report saying that except the husband, others are not involved in the alleged offence. Aggrieved, the respondent herein has taken out an application in I.A.No.3861 of 2011 to implead the mother, brother and sister of her husband. The Judicial Magistrate has considered the rival contentions and observed that in the complaint given by the respondent herein before the Protection Officer, she had made some allegation against her mother-in-law. But, there was nothing about the brother-in-law and sister-in-law, who are

arrayed as proposed 3rd and 4th respondents in the impleading petition. Therefore, allowed the impleading petition partly to the effect that the mother-in-law namely, Sakkubai was ordered to be impleaded.

3. Aggrieved by the said order, the present revision petition is filed on the ground that the said order of the trial Court impleading the second respondent, namely, Sakkubai as the respondent is against the law. The Protection Officer has filed the report, based on the complaint given by the respondent herein. There was no serious allegation against the second revision petitioner, who was impleaded as respondent in the impleading petition. There was no allegation at all against the brother-in-law and sister-in-law in the impleading petition. While so, without affording any opportunity for the second revision petitioner herein, the Court below has impleaded her to face the trial.

4. It is submitted by the learned counsel appearing for the revision petitioners that after filing the revision petition, the husband of the respondent died during the month of June 2012. The petition in O.P.No.2637 of 2010 for divorce filed by him and the petition in O.P.No.3841 of 2010 for restitution of conjugal rights filed by the respondent herein got abated. The respondent herein as wife of the deceased first revision petitioner had collected all Death-cum-Retirement Benefits of the first petitioner, who was serving in the Southern Railways. She is also employed in the Department of School Education. Without any iota of material that she is subjected to Domestic Violence and without any material to show that she needs protection under the Domestic Violence Act, the complaint was lodged to harass her husband and in-laws, which has ultimately taken away the life of her husband.

5. It is also contended that the second revision petitioner is no way connected with the matrimonial dispute, since the respondent and her deceased husband were earlier living in Bangalore for more than 11 years and Erode for four years. Thereafter, they came to Chennai for cancer treatment. During the said period, they have developed misunderstanding leading to filing the criminal complaint and petitions for divorce and restitution of conjugal rights. In any event, the respondent herein cannot claim any right of residence in the property which stands in the name of the second revision petitioner herein. Just to harass the 2nd revision petitioner to part away her property, the present petition is filed to implead her in the criminal prosecution. The second revision petitioner, who is aged above 85 years and suffering from age related ailments, has no responsibility or liability to give protection to the respondent herein under the Domestic Violence.

6. In support of his contention, the learned counsel appearing for the petitioners would also refer the judgment of the Hon'ble Supreme Court rendered in S.R.Batra @ another v. Taruna Batra reported in CDJ 2007 SC 009 wherein, the Hon'ble Supreme Court has explained the meaning of "Shared Household" as found in Section 2(s) of the Protection of Women from Domestic Violence Act, 2005.

7. The matrimonial dispute between the respondent and her husband has abruptly come to an end by sudden demise of her husband, who is the first petitioner herein. Incidental dispute regarding the domestic violence perpetrated against her has not been fortified by the report of the Protection Officer. However, since there was some reference about the domestic violence alleged to have been committed by the second revision petitioner, the lower Court has thought fit that she should be impleaded as the respondent. The sequence of events and the allegation as found, in the light of the Hon'ble Supreme Court judgment, leads to an irresistible conclusion that the second revision petitioner herein can not be roped in to the trial under the Domestic Violence Act, in view of the lack of materials. Mere a bald allegation against her with ulterior intention. If at all any rights will not sustain is vested to the respondent over the property of her husband, she can work out her remedy through the Civil Court. The criminal prosecution can not be used as a tool to settle the civil dispute.

8. Taking into consideration the cumulative facts that:

- (i) The husband of the respondent is no more
- (ii) Respondent has received all the terminal benefits of the first revision petitioner and
- (iii) Respondent is well employed.

9. The scope and ambit of the Domestic Violence Act cannot be extended for any other purpose unless and until there is materials to show that the respondent herein subjected to domestic violence and deprived of her financial capacity.

10. In this case, there is no material to prima facie show the respondent is entitle to claim domestic protection from the mother of her deceased husband.

11. In the light of the above observations, this Criminal Revision Case is allowed. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

ari/arb

To

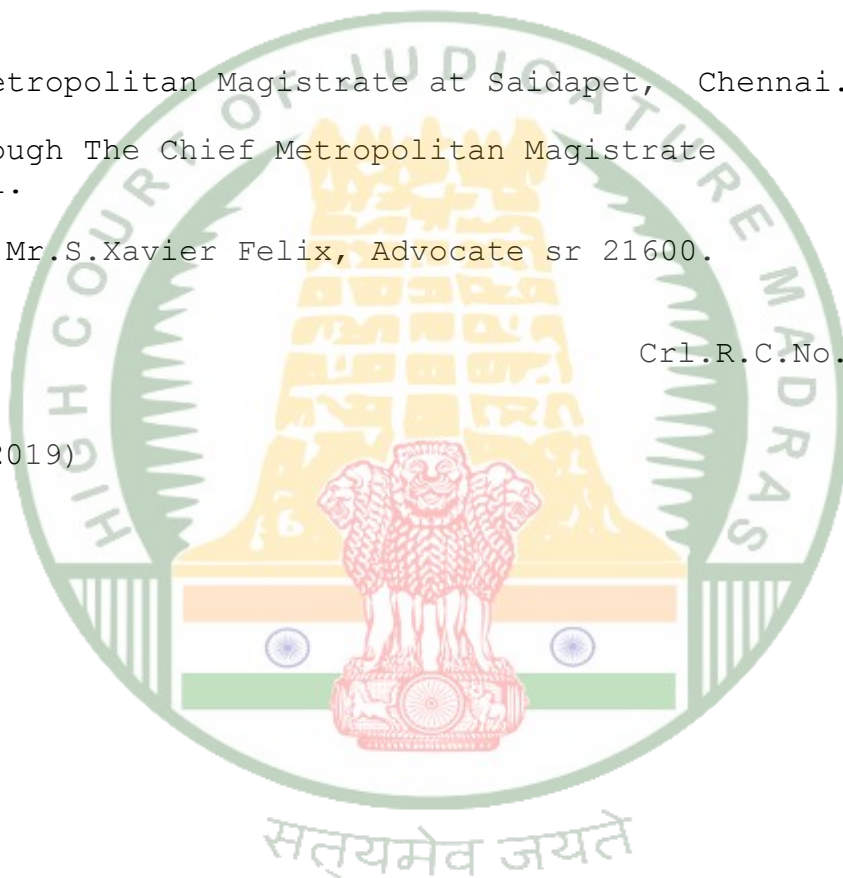
1.XVIII Metropolitan Magistrate at Saidapet, Chennai.

2. Do Through The Chief Metropolitan Magistrate
Chennai.

+2 Ccs to Mr.S.Xavier Felix, Advocate sr 21600.

Crl.R.C.No.373 of 2012

KK(CO)
SP(04/04/2019)



WEB COPY