

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.995 of 2013
and M.P.No.1 of 2013

M.Selvaraj

.. Petitioner

Vs.

1. S.Poomathi
2. M.Shobana
3. Samiyathal
4. Murugan
5. Pushpa

.. Respondents

(RR-2 to 5 are given up)

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 02.04.2013 passed in C.A.No.195 of 2012 on the file of the Principal Sessions Court, Erode, confirming the order dated 08.11.2012 passed in Crl.M.P.No.1571 of 2011 in M.C.No.2 of 2011 on the file of the Judicial Magistrate No.II (Fast Track Court No.I), Erode.

For Petitioner : Ms.J.Prithivi
For R1 : Mr.K.Kannadhasan
for Mr.V.Balamurugane

O R D E R

This revision has been filed seeking to set aside the judgment and order dated 02.04.2013 passed in C.A.No.195 of 2012 on the file of the Principal Sessions Court, Erode, confirming the order dated 08.11.2012 passed in Crl.M.P.No.1571 of 2011 in M.C.No.2 of 2011 on the file of the Judicial Magistrate No.II (Fast Track Court No.I), Erode.

2. For the sake of convenience, the parties will be referred to by their name.

3. The facts of the case in a nutshell are as under:

3.1 Selvaraj married Poomathi on 05.01.2013 and thereafter, their marriage ran into rough weather resulting in the spouses getting estranged.

3.2 It is the case of Poomathi that Selvaraj developed illegal intimacy with Shobana (Poomathi's sister) and started

living with her by neglecting Poomathi and therefore, Poomathi initiated proceedings in M.C.No.2 of 2011 before the Judicial Magistrate Court No.II, Erode, for the offence under Section 23 of the Domestic Violence Act (for brevity "the DV Act"), against Selvaraj and his family members. Poomathi also filed CrI.M.P.No.5071 of 2011 in M.C.No.2 of 2011, claiming interim maintenance.

3.3 Considering the rival contention, the trial Court, by order dated 08.11.2012 in CrI.M.P.No.5071 of 2011 in M.C.No.2 of 2011, directed Selvaraj to pay a sum of Rs.3,500/- per month, as interim maintenance to Poomathi.

3.4 Challenging the aforesaid interim order, Selvaraj filed a regular appeal in C.A.No.195 of 2012 before the Principal Sessions Court, Erode, which was dismissed on 02.04.2013.

3.5 Challenging the concurrent findings of fact arrived at the Courts below, Selvaraj has preferred the present revision under Section 397 r/w 401 Cr.P.C.

4. Heard Ms.J.Prithivi, learned counsel for Selvaraj and Mr.K.Kannadasan, learned counsel representing Mr.V.Balamurugane, learned counsel on record for Poomathi.

5. The learned counsel for Selvaraj submitted that both the Courts have erred in awarding interim maintenance, inasmuch as they did not take into consideration the financial capability of Selvaraj. She also denied the allegation of Poomathi that Selvaraj had developed illegal intimacy with Shobana and had neglected the former.

6. Per contra, the learned counsel for Poomathi refuted the submissions made by the learned counsel for Selvaraj.

7. This Court gave its anxious consideration to the rival submissions.

8. At the outset, it is pertinent to point out that a three Judge Bench of the Supreme Court, in Girish Kumar Suneja Vs CBI¹, has delineated the revisional jurisdiction as under:

"27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that

¹ (2017) 14 SCC 809

entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition - such a petition can be rejected at the threshold. If the High Court is inclined to accept the revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings. As we see it, there appear to be only two such eventualities of a revisable order and in any case only one such eventuality is before us. Consequently the result of paragraph 10 of the order passed by this Court is that the entitlement of the appellants to file a revision petition in the High Court is taken away and thereby the High Court is deprived of exercising its extraordinary discretionary power available under Section 397 of the Cr.P.C."

9. Admittedly, the trial in M.C.No.2 of 2011 was pending and an application was filed by Poomathi to subject Selvaraj, Shobana and the child born to them, for DNA profiling, in order to establish that Selvaraj had fathered the child.

10. It is the case of Poomathi that Selvaraj was a partner in S.K.M. Stitching Company and was drawing a sum of Rs.25,000/- per month, which has been seriously disputed by the learned counsel for Selvaraj.

11. In the opinion of this Court, the award of Rs.3,500/- per month, as interim maintenance, cannot be said to be excessive, bearing in mind today's cost of living. Therefore, this Court does not find any infirmity or perversity in the orders passed by the Courts below, warranting interference.

In the result, this criminal revision is dismissed as being devoid of merits. Connected Crl.M.P. is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Erode.

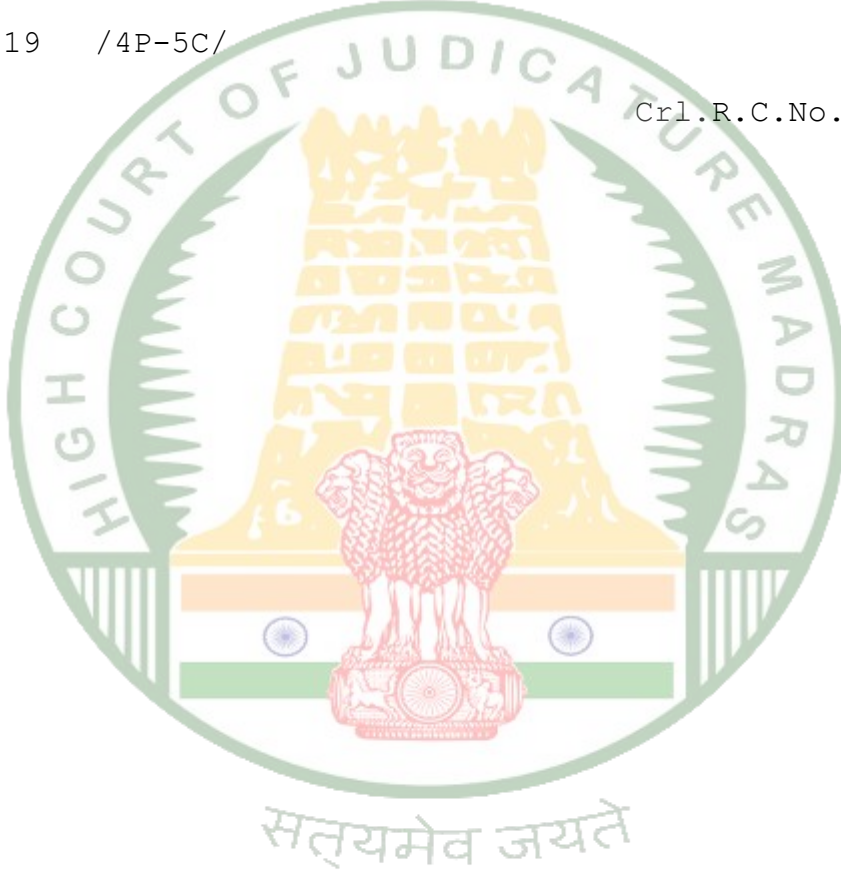
2. The Judicial Magistrate No.II,
(Fast Track Court No.I), Erode.

+lcc to M/s.S.Kaithamalai Kumaran, Advocate SR.No.88194

+lcc to M/s.P.Muthukumaraswamy, Advocate Sr.No.88034

AKM/04.12.19 /4P-5C/

Cr1.R.C.No.995 of 2013



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