

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.08.2019

CORAM

THE HONOURABLE Mr. JUSTICE P.N.PRAKASH

CrI.R.C.No.299 of 2018
and CrI.M.P.No.3565 of 2018

V.Jeevitha

... Petitioner

Vs.

A.Madhu @ Loganathan

... Respondent

Criminal Revision Petition filed under Sections 397 r/w 401 Cr.P.C. to set aside the order dated 04.01.2018 on the file of the XV Metropolitan Magistrate, George Town, Chennai in M.P.No.3634 of 2017 in D.V.C.No.22 of 2017.

For Petitioner : (*)Mr.S.Vasu

For Respondent : Mr.V.G.Anbarasu

O R D E R

This Criminal Revision has been filed to set aside the order dated 04.01.2018 passed by the learned XV Metropolitan Magistrate, George Town, Chennai in M.P.No.3634 of 2017 in D.V.C.No.22 of 2017.

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

3.Jeevitha got married to Madhu @ Loganathan on 13.02.2011 and thereafter, their marriage ran into rough weather resulting in, the spouses getting estranged. Jeevitha initiated proceedings under the Domestic Violence Act in D.V.C.No.22 of 2017 before the XV Metropolitan Magistrate, George Town, Chennai against Madhu @ Loganathan and all his family members. On receipt of notice, they did not appear before the trial Court and therefore, Madhu @ Loganathan and his family members were set ex parte in D.V.C.No.22 of 2017 on 28.09.2017. On coming to know of it, Madhu @ Loganathan filed M.P.No.3634 of 2017 in D.V.C.No.22 of 2017 for setting aside the ex parte order, which has been allowed by the trial Court on 04.01.2018. Challenging the order dated 04.01.2018, Jeevitha is before this Court.

4.Heard the learned counsel for Jeevitha and the learned counsel for Madhu @ Loganathan.

5. In *Girish Kumar Suneja Vs. CBI* [(2017) 14 SCC 809], has held that revisional jurisdiction is a discretionary one and can be exercised only if the High Court finds that there is an error apparent on the face of the record.

"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 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."

6. After all the trial Court has only set aside the ex parte order and has directed the parties to contest the case on merits, which in the opinion of this Court cannot be said to be illegal or perverse, warranting interference in exercise of revisional jurisdiction. However, it is seen that Jeevitha has not been paid any maintenance till date.

7. Learned counsel for Jeevitha submitted that Madhu @ Loganathan filed H.M.O.P.No.61 of 2016 before the Sub Court, Chengalpet for divorce on the ground of cruelty. Jeevitha filed H.M.O.P.No.1072 of (*)2018 before the Family Court, Chennai for restitution of conjugal rights. Thereafter, this Court has transferred H.M.O.P.No.61 of 2016 from the file of the Sub Court, Chengalpet to the file of the Family Court, Chennai to be tried along with H.M.O.P.No.1072 of (*)2018. Accordingly, H.M.O.P.No.61 of 2016 has been transferred and renumbered as H.M.O.P.No.1072 of (*)2018 and is now being heard by the learned IV Additional Family Court, Chennai along with H.M.O.P.No.1072 of (*)2018. It is also brought to the notice of this Court that Jeevitha has filed M.C.No.174 of 2017 under Section 125 Cr.P.C. and the same is also pending on the file of the IV Additional Family Court, Chennai. Jeevitha has filed I.A.No.5317 of 2018

in H.M.O.P.No.1072 of (*)2018 claiming interim maintenance, in which, the Family Court by order dated 06.07.2019 has awarded interim maintenance of Rs.12,000/- per month. Challenging the said order, Madhu @ Loganathan has filed C.M.A.No.3123 of 2019 before this Court and the same is pending. Jeevitha has filed M.C.No.174 of 2017 under Section 125 Cr.P.C. Thus, one matrimonial relationship has given room to seven rounds of litigation between the parties.

8.In the opinion of this Court, the order dated 04.01.2018 passed by the learned XV Metropolitan Magistrate, George Town in M.P.No.3634 of 2017 in D.V.C.No.22 of 2017 does not suffer from any infirmity or perversity warranting interference before this Court under Section 397 r/w 401 Cr.P.C.

9.In the result, this petition is dismissed. However, Madhu @ Loganathan is directed to appear before the XV Metropolitan Magistrate, George Town, Chennai on 30.08.2019 and execute a bond under Section 88 Cr.P.C. for Rs.5,000/- without sureties. Thereafter, Madhu @ Loganathan shall pay interim maintenance of Rs.5,000/- to Jeevitha on or before 5th of every English calendar month by depositing the same to the credit of D.V.C.No.22 of 2017 before the trial Court. Payment of such interim maintenance shall commence from September 2019. Mr.Madhu @ Loganathan, who is present in this Court accepted to pay Rs.5,000/- per month as interim maintenance to Jeevitha in D.V.C.No.22 of 2017. On such deposit, Jeevitha will be entitled to withdraw the same. The parties can bring to the notice of the High Court in C.M.A.No.3123 of 2019, about this order passed by this Court in this petition. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)

Dated:22.08.2019

**(*)Corrected as per order
of this Court dated 28.08.2019**

Sd/-

Assistant Registrar(CS-II)

Dated:04.09.2019

/True Copy/

Sub-Assistant Registrar

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To

1.The XV Metropolitan Magistrate,
George Town, Chennai.

2.-Do- Thro The Chief Metropolitan
Magistrate, Egmore, Chennai.

3.The IV Additional Judge,
Family Court, Chennai.

+1 CC to Mr.S. Vasu, advocate
vide sr 72243.

+1 CC to Mr.V.G.Anbarasu, Advocate
vide sr 71658.

To be Substituted to the
order already despatched
on 26.08.2019

Cr1.R.C.No.299 of 2018

AK (CO)

SP (22/08/2019)

(CO)

SSM(04/09/2019)