

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.101 of 201  
&  
Crl.M.P.No.699 of 2016

C.Saravanan

... Petitioner/Respondent/Respondent

Vs.

L.Kiruthika @ Nagalakshmi

... Respondent/Appellant/Petitioner

Prayer:- Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C., to set aside the order passed by the Learned II Additional Sessions Judge, Salem in Crl. Appeal No.8 of 2015 dated 07.08.2015 against C.M.P.No.430 of 2014 in DVOP.No.21 of 2014 on the file of the Additional Mahila Court, Salem, dated 14.08.2014.

For Petitioner : Mr.S.M.Loganathan  
For Respondent : Mr.M.Deivandran

O R D E R

This Criminal Revision Case has been filed by the petitioner under Section 397 r/w 401 Cr.P.C., to set aside the order passed by the Learned II Additional Sessions Judge, Salem in Crl. Appeal No.8 of 2015 dated 07.08.2015 against C.M.P.No.430 of 2014 in DVC.No.21 of 2014 on the file of Additional Mahila Court, Salem, dated 14.08.2014.

2.The Revision Petitioner is husband and the respondent is wife. The marriage was solemnized on 06.06.2011. After the marriage, the Revision Petitioner/ husband harassed his wife. Hence, the respondent filed a petition against the Revision Petitioner under Section 23 of Domestic Violence Act, for maintenance. According to the respondent, the Revision Petitioner is doing money lending business and also working as a

sales representative. Therefore, he is the man of means to pay maintenance to his wife.

3.The learned Additional Mahila Court Judge, Salem after taking the complaint, dismissed the petition in C.M.P.No.430 of 2014 in D.V.C.No.21/2014 on the ground that the respondent is working at Amirth Vikas College, Salem and getting a monthly salary and she has sufficient means to maintain herself for the present as there is no need to pass an interim relief of maintenance in favour of the respondent. Aggrieved by the said order, the respondent preferred a Criminal Appeal in Crl.A.No.08 of 2015 on the file of the II Additional Sessions Judge, Salem.

4.The learned II Additional Sessions Judge, Salem after hearing the appeal and also considering the material facts, set aside the order passed by the learned Judicial Magistrate, Additional Mahila Court, Salem in C.M.P.No.430 of 2014 in D.V.C.No.21/2014 dated 14.08.2014 and directed the Revision Petitioner / husband to pay a sum of Rs.3,500/- per month to his wife and he was directed to pay the said maintenance allowance to his wife either directly or through postal service within the 5<sup>th</sup> day of every English Calender month. Aggrieved by the said order, the Revision Petitioner is before this Court.

5.The learned counsel appearing for the petitioner would submit that he is the respondent in the Criminal Appeal in Crl.A.No.8 of 2015. The Revision Petitioner has stated in his counter that his wife is working at Amirth Vikas College, Salem, considering the said statement made by the revision petitioner, the learned Judicial Magistrate dismissed the petition in CMP.No.430 of 2014. Whereas, the Appellate Court failed to consider the proved fact that the respondent is employed and awarded a monthly maintenance of Rs.3,500/- to the respondent, which warrants interference of this Court.

6.The learned counsel appearing for the respondent would submit that the respondent was previously working and had to quit the employment due to the harassment given by the revision petitioner. Hence, the Appellate Court considered and appreciated the said fact and awarded a monthly maintenance of Rs.3,500/- in Crl.A.No.8 of 2015. The learned counsel would further submit that no evidence was let in before the learned Judicial Magistrate in CMP No.430 of 2014. The learned Judicial Magistrate decided the case only based on the affidavit filed by the wife and dismissed the maintenance petition. Accordingly, prays for dismissal of this Revision.

7.As the respondent herself admitted that prior to the filing of the maintenance petition, she was working in Amirth

Vikas College at Salem and getting a monthly salary. She has also stated that due to the harassment, she is not in a mood to go to the job. Except this no other materials are available to show that the respondent is not going for any job. The respondent had not specifically stated in the affidavit on which date she had left the job, how long she was without job and the date of quitting the job. Therefore, without any specific materials, the Appellate Court has set aside the order of the learned Judicial Magistrate and awarded a monthly maintenance of Rs.3,500/-.

8.Since the main case i.e. D.V.C.No.21 of 2014 is pending and it is only an interim order, the order passed by the Appellate Court is liable to be set aside. Accordingly, the order passed by the learned II Additional Sessions Judge, Salem in CrI. Appeal No.8 of 2015 dated 07.08.2015 is hereby set aside.

9.Both the parties are at liberty to lead evidence in the main case and prove their respective cases. The learned Judicial Magistrate is hereby directed to dispose of the main case in D.V.C.No.21 of 2014 within a period of three months from the date of receipt of a copy of this order.

10.With the above direction this Criminal Revision Case is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate,  
Additional Mahila Court, Salem.

2.do Thro Chief Judicial Magistrate,  
Salem.

3..The II Additional Sessions Judge, Salem

+lcc to Mr.S.M.Loganathan, Advocate sr.17846  
+lcc to Mr.M.Deivandran, Advocate sr.17700

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and  
CrI.M.P.No.699 of 2016

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