

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.Nos.1206 & 1207 of 2017

1. M.Gopalakrishnan @ Mariappan
 2. M.Mariamammal
 3. Muniammal @ Nirmala
- .. Petitioners/Respondents
- Vs.

M.Saroja

.. Respondent/Complainant

Prayer in Crl.RC.1206/2017:- Criminal Revision filed under Sections 397 and 401 Cr.P.C., praying to call for the records in Crl.A.No.95 of 2016 dated 27.06.2017 passed by the Hon'ble II Additional Sessions Judge, Chennai, partly allowing the appeal and modifying the order of maintenance passed in MC.No.63 of 2011 dated 23.01.2015 passed by the Hon'ble XXIII Metropolitan Magistrate Court, Saidapet, Chennai-600 035 and set aside the same.

Prayer in Crl.RC.1207/2017:- Criminal Revision filed under Sections 397 and 401 Cr.P.C., praying to call for the records in Crl.A.No.35 of 2015 dated 27.06.2017 passed by the Hon'ble II Additional Sessions Judge, Chennai, dismissing the appeal and modifying the order of maintenance passed in MC.No.63 of 2011 dated 23.01.2015 passed by the Hon'ble XXIII Metropolitan Magistrate Court, Saidapet, Chennai-600 035 and set aside the same.

For Petitioners: Mr.L.Rajasekar

For Respondent : Ms.Thenmozhi Shivaperumal

COMMON ORDER

These Criminal Revisions have been filed to set aside the judgments made in Crl.A.No.95 of 2016 and Crl.A.No.35 of 2015 dated 27.06.2017 passed by the Hon'ble II Additional Sessions Judge, Chennai, partly allowing the appeal in Crl.A.No.95/2016 and dismissing the appeal in Crl.A.No.35 of 2015 and modifying the order of maintenance passed in MC.No.63 of 2011 dated 23.01.2015 passed by the Hon'ble XXIII Metropolitan Magistrate Court, Saidapet, Chennai.

2. The first petitioner is the husband, the petitioners 2 and 3 are the sisters of the first petitioner and the respondent is the wife. The respondent/wife filed a complaint against the revision petitioners under the Protection of Women from Domestic Violence Act, 2005. The same was referred to the competent authority and the learned XXII Metropolitan Magistrate, Saidapet, Chennai, taken the complaint in MC.No.63 of 2011. After considering the evidences put forth on either side, the trial Court, on 23.01.2015, granted the following reliefs:-

1. the petitioners/respondents therein should not disturb the complainant/wife or the children;
2. the petitioners/respondents therein have to permit the complainant to live in the shared household; or the first petitioner/husband has to arrange for rental accommodation to the complainant, comprising of one bedroom, one hall, kitchen and bathroom with the amenities such as electricity and water, by paying the rent and the advance for the said accommodation; or the first respondent has to pay a sum of Rs.5,000/- to the complainant to meet the rental amount;
3. the first petitioner/husband has to pay a sum of Rs.5,000/- to the complainant and the children for their monthly maintenance from the date of the petition to December 2014 within three months from the date of the order;
4. to pay the January 2015 month's maintenance of Rs.5,000/- on or before 5th of the subsequent English Calendar month to the complainant/wife;
5. If the first respondent is in possession of any gold jewels, household articles, clothes, he should return the same to the complainant immediately.

Against the said order of the trial Court, the respondents 1 to 3 filed an appeal in Crl.A.No.35 of 2015 for setting aside the order and the complainant/wife has also filed the appeal in Crl.A.No.95 of 2016 seeking enhancement of maintenance before the II Additional Sessions Judge, Chennai. Subsequently, the complainant/wife filed a petition under Section 391 of Cr.P.C in Crl.M.P.No.2649 of 2017 in Crl.A.No.35 of 2015 seeking to file the additional documents to support the case. After hearing the arguments in both the appeals on 27.06.2017, the learned II Additional Sessions Judge, Chennai, dismissed the appeal filed by the revision petitioners in Crl.A.No.35 of 2015 and directed the first petitioner/husband to pay a sum of Rs.10,000/- per month towards monthly maintenance to the respondent/wife and children and partly allowed the appeal filed by the respondent/wife in Crl.A.No.95 of 2016. There against, the petitioners filed the present revisions.

3. The learned counsel for the petitioners would submit that there was no Domestic Violence and the respondent/wife herself voluntarily left the matrimonial house and the learned Sessions Judge failed to consider the said fact. The first

petitioner/husband filed the petition for divorce in HMOP.No.4526 of 2011 and in order to get over from this case, the respondent/wife has filed the complaint under the Domestic Violence Act. None of the grounds have made out and attracted the Domestic Violence Act. Both the Courts failed to consider the facts, erroneously passed the order of maintenance, which warrants interference of this Court.

6. The learned counsel appearing for the respondent would submit that their marriage was solemnised on 30.08.1991 and out of their wedlock two children were born of which, one is mentally retarded person and other is physically challenged person. Since the respondent/wife is unable to maintain those persons, she has filed the petition seeking maintenance. Though the learned Magistrate awarded a sum of Rs.5.000/- per month towards maintenance, the Appellate Court, after considering the facts of the case, rightly enhanced the maintenance to Rs.10,000/- per month, which warrants no interference. Therefore, these appeals may be dismissed

7. Heard both sides and perused the records.

8. The relationship of the parties are not in dispute. Out of the wed lock two children were born. Out of which one is mentally retarded and other one is physically challenged.

9. The respondent is residing separately with her two children. The Appellate Court, as fact finding Court, re-appreciated the entire evidence, dismissed the appeal filed by the husband, considering the requirement of respondent, the appeal filed by the respondent was partly allowed. When there is no perversity, the Revision Court cannot substitute own reason by interfering the judgment of the trial Court and Appellate Court.

10. In this regard, it is pertinent to refer to the decision of the Hon'ble Apex Court in the case of State of Kerala Vs. Putthumana Illath Jathavedn Namboodri, reported in AIR 1999 SC 981 held as follows:

".... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-

appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of Justice..."

11. Based upon the oral and documentary evidence, when both the Courts below held that there is Domestic Violence, this Court, being the Revisional Court, has no power of reassessing the evidence and substitute its views on findings of fact.

12. Considering the facts and circumstances of the case and also considering the disability of the children, this Court does not find any reason to interfere with the judgment of the Appellate Court and the appeals are liable to be dismissed.

13. Accordingly, these Criminal Revision Cases are dismissed.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

kmi

To:

1.The XXIII Metropolitan Magistrate,
Saidapet, Chennai-600 035.

2.The II Additional Sessions Judge,
Chennai.

+2ccs to Mr.L.Rajasekar Advocate, S.R.Nos.32981 & 92981

+2ccs to Mrs.Thenmozhi Shivaperumal, S.R.Nos.33127 & 33128

Cr1.R.C.Nos.1206 & 1207 of 2017

SJ(CO)

RRS (17/06/2019)

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