IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.RC.Nos.1240 & 1241 of 2017
and
Crl.M.P.Nos.11888 & 11890 of 2017
and
Crl.M.P.SR.Nos.29912, 29915, 29916 of 2019 & 55877 of 2018

1. M.R. Ramasamy
2. P.Hamsaveni @ HHamsa

... Petitioners in both Crl.RCs

Vs.

1. Karthika

2. Minor Swarnika
Rep. By her natural and mother guardian,
the first respondent herein

... Respondents in both Crl.RCs

Prayer in Crl.R.C.No.1240/2017 : Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973, to allow the revision petition setting aside the order dated 25.07.2017 passed in C.A.No.126 of 2016 on the file of the I Additional District and Session Judge at Coimbatore, Coimbatore District having preferred against the judgment and order dated 06.08.2016 passed in C.M.P.No.6865 of 2015 in D.V.A.No.28 of 2015 on the file of Judicial Magistrate – VI at Coimbatore, Coimbatore District.

Prayer in Crl.R.C.No.1241/2017 : Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973, to allow the revision petition setting aside the order dated 25.07.2017 passed in C.A.No.109 of 2016 on the file of the I Additional District and Session Judge at Coimbatore, Coimbatore District having preferred against the judgment and order dated 06.08.2016 passed in C.M.P.No.6865 of 2015 in D.V.A.No.28 of 2015 on the file of Judicial Magistrate – VI at Coimbatore, Coimbatore District.

CMP Sr 29915, 29916 and 55877/19 sought to be filed to delete, the condition to modify and to extend time respectively of the order dated 21.9.2017 made in MP 11890 and 11888 in Crl.RC 1240 & 1241 of 2017.

For Petitioners : Mr.V.Rajendran
(in both Crl.RCs)

For Respondents : Mr.V.Anand
(in both Crl.RCs)

C O M M O N O R D E R

For the sake of convenience, all the parties are referred to by their name.

2. Karthika got married to Gopinath on 01.09.2008 and they have a child Swarnika through the wedlock. Gopinath had an untimely death on 03.01.2014, due to heart attack. Thereafter, Karthika initiated proceedings in D.V.A.No.28 of 2015 before the VI Judicial Magistrate, Coimbatore against her parents-in-law Ramasamy and Hamsa, claiming various reliefs under the Domestic Violence Act, 2005 (for brevity "the DV Act") including maintenance. She filed C.M.P.No.6865 of 2015 in D.V.A.No.28 of 2015 for certain interim reliefs. After hearing either side, the learned Judicial Magistrate, Coimbatore passed an order dated 06.08.2016 in C.M.P.No.6865 of 2015 directing Ramasamy and Hamsa to pay Rs.15,000/- per month as maintenance to Swarnika. The learned Judicial Magistrate refused to grant other interim relief and has held that the claims for those reliefs could be decided in the main petition in D.V.A.No.28 of 2015. Challenging the order dated 06.08.2016 in C.M.P.No.6865 of 2015 passed by the learned Magistrate, Karthika filed C.A.No.109 of 2016 and Ramasamy and Hamsa filed C.A.No.126 of 2016 under Section 29 of the DV Act before the Court of Session, Coimbatore. Additional District and Sessions Court, Coimbatore by a common order dated 25.07.2017 dismissed C.A.No.126 of 2016 that was filed by Ramasamy and Hamsa and allowed C.A.No.109 of 2016 that was filed by Karthika and granted the following reliefs:-

> " i) that the appellants/petitioners are entitled for shared household in the petition A schedule property and the respondents shall provide a reasonable premises for the petitioners to live in a dignified manner.
>
> ii) The respondents shall pay monthly maintenance of Rs.10,000/- to each of the petitioners.
>
> iii) The respondents are directed to return the

articles and property admitted by them in para 32 of the counter affidavit filed in CMP.No.6865/2015 dated 29.12.2015.

iv) In respect of other reliefs the appeal is dismissed.

C.A.No.126/2016 is hereby dismissed."

3. Challenging the order dated 25.07.2017, Ramasamy and Hamsa filed two Criminal Revision Petitions viz. 1240 and 1241 of 2017 and sought interim stay. At the time of admission on 20.09.2017, this Court passed the following order :

"2. There shall be an order of interim stay on condition that the petitioner shall deposit a sum of Rs.15,000/- (Rupees fifteen thousand only) per month to the credit of D.V.A.No.58 of 2015 on the file of the learned Judicial Magistrate No.6, Coimbatore, towards the educational and other expenses of the second respondent/minor grand daughter of the petitioners and such payment shall be made from September, 2017 onwards and each month payment shall be deposited before the said Court as stated above, on or before 10th of every succeeding English calender month, until further orders.

3. The first respondent is given liberty to withdraw the said amount, to be paid by the petitioners every month as directed above, from the lower Court by filing formal petition.

4. Post the matter after four weeks."

4. Heard the learned counsel appearing for Ramasamy and Hamsa and learned counsel for Karthika.

5. Learned counsel for Ramasamy submitted that pursuant to the order dated 06.08.2016 in C.M.P.No.6865 of 2015, Ramasamy paid Rs.15,000/- per month till October 2018 and thereafter, he fell sick and was hospitalised. He also contended that Karthika has entered into their house and has taken forcible possession of a portion of their house and is not vacating.

6. Per contra, learned counsel for Karthika refuted the contentions.

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

8. Admittedly, in this case, Ramasamy and his wife Hamsa are aged about 72 and 68 years respectively. Learned counsel for Ramasamy submitted that Ramasamy and Hamsa are pensioners and also submitted that one of their daughter died in an accident and her child is being brought up by the old couple.

9. It is brought to the notice of this Court that the case in D.V.A.No.28 of 2015 has been transferred from the file of the Judicial Magistrate Court No.VI to the file of the Judicial Magistrate Court No.II, Coimbatore and has been renumbered as D.V.A.No.82 of 2019.

10. In the appeal filed by Karthika, the Sessions Judge has granted certain reliefs, for which, evidence is required to be taken. Taking into consideration the subsequent developments, especially the deterioration in the health of both Ramasamy and Hamsa, this Court is of the view that interests of justice will be served, if the order dated 25.07.2017 passed by First Additional District and Sessions Court in C.A.No.109 of 2016 and 126 of 2016 are set aside. Similarly, the order dated 06.08.2016 in C.M.P.No.6865 of 2015 passed by the VI Judicial Magistrate, Coimbatore is modified as follows:

"Ramasamy and Hamsa shall pay Rs.7500/- per month from November, 2019 as interim maintenance to Karthika and Swarnika until the disposal of D.V.A.No.28 of 2015 by the Judicial Magistrate No.II, Coimbatore. Karthika and Swarnika shall not be disturbed from her matrimonial home until final orders are passed in D.V.A.No.82 of 2019. This relief granted by this Court shall not be a bar for her eviction from the premises through a regular suit in a manner known to law."

11. In the result, these Criminal Revision Petitions are disposed of in the above terms. Consequently, the connected miscellaneous petitions are closed. The objection raised by the Registry is upheld and accordingly, Crl.M.P.SR.Nos.29912, 29915 & 29916 of 2019 and 55877 of 2018 are dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. I Additional District and Session Judge,
   Coimbatore,
   Coimbatore District.

2. Judicial Magistrate – IV,
Coimbatore,
Coimbatore District.

3.The Judicial Magistrate No.II,
Coimbatore.

4.The Chief Judicial Magistrate,
Coimbatore.

+1cc to M/s.V.Anand, Advocate Sr.68424
+2cc to M/s.V.Rajendran, Advocate Sr.68349

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srg 03/10/2019