

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.27 of 2017

Thangamani

... Petitioner

Vs

S.Nallasamy

... Respondent

PRAYER: Criminal Revision case filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the order dated 22.10.2016 made in Crl.A.No.122 of 2016 by the II Additional District and Sessions Court, Erode reversing the order dated 06.08.2016 made in M.C.No.13 of 2012 on the file of the District Munsif Cum Judicial Magistrate Court, Kodumudi.

For Petitioner : Ms. Sashi for M/s.M.Guru Prasad

For Respondent : M/s.VPK.Gowtham

O R D E R

This Criminal Revision case has been filed to set aside the order dated 22.10.2016 made in Crl.A.No.122 of 2016 on the file of the II Additional District and Sessions Court, Erode reversing the order dated 06.08.2016 made in M.C.No.13 of 2012 on the file of the District Munsif Cum Judicial Magistrate Court, Kodumudi.

2 The petitioner is the wife and the respondent is her husband. The revision petitioner filed a complaint against the respondent under Domestic Violence Act Section 18,19,20,21,22 of the Domestic Violence Act, before the learned District Munsif Cum Judicial Magistrate Court, Kodumudi. After the trial proceedings, the learned District Munsif Cum Judicial Magistrate, Kodumudi awarded a sum of Rs.3,000/- each to the petitioner and her daughter, it comes totally Rs.6,000/- and permitted the petitioner to live in the house Door No.63, which, belongs to the respondent and the respondent has to pay a sum of Rs.75,000/- which was spent towards marriage expenses by the father of the revision petitioner and Rs.1,00,000/- as compensation for mental agony. Challenging the said order passed

by the learned District Munsif Cum Judicial Magistrate, Kodumudi, in C.C.No.13 of 2012 the respondent/husband filed an appeal before the learned II Additional Sessions Judge Erode, in Crl.A.No.122 of 2016. After an elaborate enquiry, the II Additional Sessions Judge, Erode, set aside the order passed by the learned District Munsif Cum Judicial Magistrate, Kodumudi and allowed the appeal. Challenging the said judgment the petitioner/wife has preferred the present revision case before this Court.

3 The case of the petitioner is that the marriage between the petitioner and the respondent was solemnized in 02.11.1998 as per their customs, and both of them lived together in the house of the respondent. At the time of the marriage, the parents of the petitioner/wife provided 15 sovereigns jewels and Rs.1,00,000/- as dowry and also provided two wheeler TVS Suzuki bearing Registration No. TN 33 K 1157. Due to their wedlock, they blessed with one female child namely Loga Nithya. After the delivery of the child the petitioner back to the house of the respondent, the parents of the respondent demanded Rs.30,000/- from the parents of the petitioner and they also demanded dowry. On 25.03.2011 they prevented the revision petitioner/wife to live in the house of respondent and the petitioner and her daughter are living separately.

4 In order to prove the case of the petitioner before the Magistrate on the side of the petitioner three witnesses were examined and two documents were marked. On the side of the respondent three witnesses were examined.

5 The learned District Munsif cum Judicial Magistrate, Kodumudi passed an order to the effect that the 1st respondent has to pay a sum of Rs.3,000/- each to the petitioner and her daughter as maintenance and the petitioner along with her daughter are permittend to reside in the house situated at Door No.63, Nanjappagoundanpudhur, Kulandhantottam, P.Kaalmangalam (Panjayat). Further it is ordered that the 1st respondent has to pay Rs.7,500/- towards marriage expenses incurred by the parents of the petitioner and the 1st respondent has to pay Rs.1,00,000/- to the petitioner towards mental agony. The trial Court considering the fact that the 1st respondent has agreed with the expenses have been incurred by the parents of the petitioner and the 1st respondent never filed any petition for revision and the petitioner has every right to reside in the house mentioned above. Against which the respondent has been filed the appeal before the learned II Additional Sessions Judge Erode.

6 The lower appellate Court after re-appreciating the evidence adduced before the trial Court and allowed the appeal by setting aside the order of the learned District Munsif cum

Judicial Magistrate, Kodumudi. Against which, the revision petitioner filed the present Criminal Revision Case before this Court.

7 On reading of the complaint , proof affidavit filed by the petitioner, counter filed by the respondent. It is crystal clear that the marriage between the petitioner and the respondent, birth of one female child to them and the petitioner was residing in the house of the respondent are not in dispute. The only defence that the respondent demanded dowry from the petitioner and also driven away the petitioner along with her daughter from the matrimonial home to her parental home, which affect her mentally.

8 It is pertinent to note that marriage is not in dispute. Even though the respondent has stated that he is ready to live with his wife, he has not taken any effective steps to get back his wife along with his child to the matrimonial home. Further it is to be noted that the respondent has stated that the petitioner is doing business with her parents and she is earning considerably. But the said fact has not been proved by the respondent. Admittedly, the respondent has not filed any petition before the competent Court and the paternity of the child is also not in dispute.

9 On reading of the orders of Courts below, it is pertinent to note that the Appellate Court failed to consider the facts that the marriage is admitted, paternity of the child is not in dispute and they are living separately, the respondent has not taken any effective steps to take back them to the matrimonial home. Therefore, under these circumstances, the judgment of the II Additional Sessions Judge is set aside to the extent that the revision petitioner and her child are entitled to get Rs.3,000/- each as monthly maintenance. The petitioner along with her child are also permitted to reside in the house situated at Door No.63, Nanjappagoundanpudhur, Kulandhantthottam, P.Kaalmangalam (Panjayat). In respect of the other two relieves i.e return of marriage expenses of Rs.75,000/- to the petitioner and Rs.1,00,000/- towards mental agony are confirmed and the appeal is dismissed to that effect.

10 Accordingly, the present Criminal Revision Case is partly allowed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sbn

To

1.The learned District Munsif Cum Judicial Magistrate Court,
Kodumudi.

2.The learned II Additional Sessions Judge,
Erode.

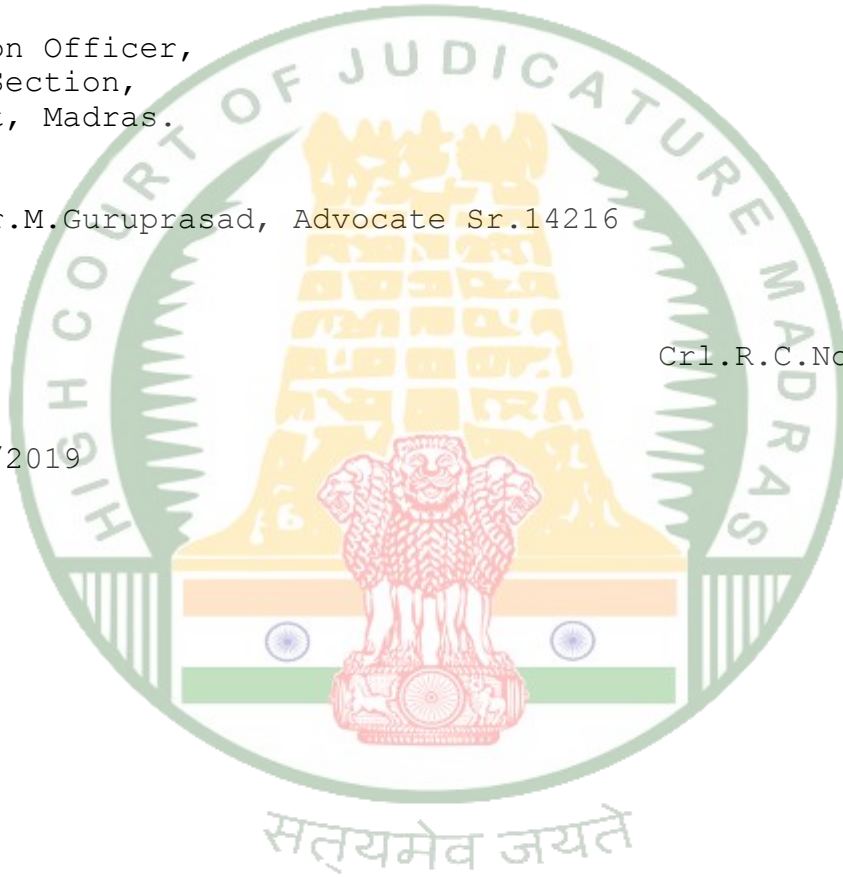
Copy to

The Section Officer,
Criminal Section,
High Court, Madras.

+lcc to Mr.M.Guruprasad, Advocate Sr.14216

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