

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.30 of 2017 and
Crl.M.P.No.14563 of 2019

1. R.Sanjeevi
2. N.Arthi

... Petitioners/Respondents

Vs.

Pushpalatha

... Respondent/Petitioner

PRAYER: This Criminal Revision Petition has been filed, under Sections 397 and 401 of Cr.P.C., seeking to set aside the order dated 17.02.2016, made in C.M.P.No.133/2015 in D.V.A.No.70/2014, by the learned Judicial Magistrate No.6, Coimbatore as confirmed in the judgment dated 04.11.2016, made in Crl.A.No.114/2016, by the I Additional District and Sessions Judge, Coimbatore.

For Petitioners: Mr.D.Udhayasuriyan

For Respondent : Mr.K.Gandhikumar

O R D E R

- 1.By consent of both parties, the criminal revision petition is taken up for final hearing.
- 2.The Criminal Revision Petition has been filed by the petitioners challenging the order of interim maintenance passed by the I Additional District and Sessions Judge, Coimbatore, made in Crl.A.No.114/2016, dated 04.11.2016, dismissing the appeal and confirming the order passed by the learned Judicial Magistrate No.6, Coimbatore made in C.M.P.No.133/2015 in D.V.A.No.70/2014, dated 17.02.2016, directing the revision petitioner/husband to pay an amount of Rs.15,000/- per month towards her expenses and maintenance, to be paid within 5th of every month.
- 3.For the sake of convenience, the parties are referred to as the husband and wife and the respondent/wife had filed a petition under the Domestic Violence Act in D.V.No.70/2014, seeking for interim maintenance for herself and she had filed the above application stating that the marriage between

herself and the revision petitioner/husband was solemnised on 16.02.1981 and a female child was born to her. At the time of marriage, parents of the wife had given articles (rPh; thpirfs;) and marriage expenses. The respondent/wife had gone to her parents house for delivery during the year 1984 and thereafter, the revision petitioner deserted her and various steps taken by both families had ended in failure. The revision petitioner/husband had filed HMOP No.40/1990, before the Sub Court, Tiruppur and the said petition was decreed against the respondent/wife. Against the order of decreetal, the respondent/wife had preferred an appeal in C.M.A.No.60/1993, before the Principal District Court, Coimbatore and the same was allowed. Even thereafter, the revision petitioner/husband has not taken his wife to the matrimonial home and he has also not paid any amount towards maintenance. Since, the marriage between the respondent/wife and the revision petitioner/husband was in existence and since the revision petitioner/husband was liable to pay the maintenance to the respondent/wife, the respondent/wife had filed DV.No.70/2014, seeking for various reliefs and also maintenance, at the rate of Rs.25,000/- per month, stating that the revision petitioner/husband was earning more than Rs.1,00,000/- per month.

- 4.The revision petitioner/husband had filed a counter stating that the wife in order to live with her parents, had voluntarily deserted him and started living with her parents. Further, it had been stated that the respondent/wife has filed O.S.No.183/2006, before the Sub Court, Tiruppur and that the Sub Court, Tiruppur had granted maintenance of Rs.2,000/- per month to the petitioner. Having got an order of maintenance of Rs.2,000/- per month, she is not entitled to maintenance.
- 5.It was further stated in the counter that having got an order of maintenance in the suit the respondent/wife had filed MC.No.4/2012, before the Family Court, Coimbatore seeking maintenance and the same was dismissed by the Family Judge on merits. Suppressing all the above facts, the respondent/wife had filed the application, seeking for interim maintenance and thereby, the petition for interim maintenance was not maintainable.
- 6.After considering the contention of both sides, the Trial Court passed an order, restraining the petitioner/husband from committing Domestic Violence against the respondent/wife and restrained him from encumbering the properties belongs to him and further, ordered protection order for residence, return of jewels and articles and ordered to pay a sum of Rs.15,000/- per month as interim maintenance. Against the order passed by the Trial Court, the revision petitioner/husband had preferred

an appeal, challenging the order of maintenance.

7. The revision petitioner/husband had stated that already maintenance was ordered by the Sub Court, Tiruppur in O.S.No.983/2006 and thereby, the order of grant of interim maintenance in Domestic Violence Proceedings is not maintainable. The Appellate Court after considering the rival submissions held that the revision petitioner/husband had raised grounds only in respect of grant of order of maintenance alone and the grounds raised by the revision petitioner/husband was that the Sub Court, Tiruppur, had already granted interim maintenance of Rs.2,000/- per month in O.S.No.183/2006, and the Appellate Court referring to Section 20(1)(d) read with Section 36 of the Protection of Women from Domestic Violence Act, held that the Act provides for order to pay the monthly maintenance in addition to any other order of maintenance passed by any Civil Court or order of maintenance under Section 125 of Cr.P.C., and finding that there is no irregularity in the order of interim maintenance, had dismissed the appeal against which, the present revision has been filed.
8. The learned counsel for the petitioner would submit that the respondent/wife had already obtained an order of maintenance in O.S.No.183/2006, before the Sub Court, Tiruppur, where it had directed the revision petitioner/husband to pay a monthly maintenance of Rs.2,000/- per month. When such being so, the order of granting interim maintenance, at the rate of Rs.15,000/- per month, the Trial Court is illegal and would thereby, seek to set aside the order.
9. The learned counsel for the respondent/wife would submit that though, the order was passed in O.S.No.983/2006, by the Sub Court, Tiruppur, directing the revision petitioner/husband to pay an amount of Rs.2,000/- per month towards interim maintenance of the respondent/wife, it was an ex parte order and that the revision petitioner/husband had filed a petition to set aside the ex-parte order and the ex-parte order had been set aside after two years and the suit is pending trial as on today. The revision petitioner/husband has not paid any amount towards maintenance of the respondent/wife till date and he has been dragging on the proceedings and avoid making payments to the wife. He would further submit that the Section 36 of the Protection of Women from Domestic Violence Act, 2005, provides that the act is not in derogation of any other law. The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force and would submit that as on date, not even a single rupee had been paid to the respondent/wife as maintenance, under any other law and the Trial Court, finding

that the marriage between the respondent wife and the revision petitioner was in subsistence and that no amount has been paid so far, has awarded interim maintenance at the rate of Rs.5,000/- per month and that the D.V.A.No.70/2014, is pending before the learned Judicial Magistrate, for the past five years and the Execution Petition is also pending.

10.This court heard the submissions of the learned counsel on either side and also perused the impugned order.

11.The marriage between the revision petitioner/husband and the respondent/wife had taken place in the year 1981 and the revision petitioner/husband has not maintained his wife, thereby, necessitating the wife to file O.S.No.983/2006, before the Sub Court, Tiruppur. The revision petitioner/husband had remained ex parte and an ex parte order was passed in the year 2012 viz., 08.02.2012 and thereafter, the revision petitioner/husband had filed the petition, to set aside the ex parte order and the ex parte order has been set aside on 20.09.2016 and the suit is pending till date. No maintenance amount has been paid as directed in O.S.No.983/2006 and the respondent/wife had filed M.C.No.4/2012, seeking maintenance and on the written submissions made by the revision petitioner/husband and the M.C.No.4/2012, had been dismissed by the Family Court and as on date, no other proceedings seeking for maintenance or any order has been passed against the revision petitioner/husband, ordering maintenance to the respondent/wife. The only proceedings which is pending against the revision petitioner/husband and the respondent/wife in D.V.A.No.70/2014, in which an amount of Rs.15,000/- is directed to be paid as interim maintenance.

12.Though, the D.V.A., proceedings is pending from the year 2014, an order of interim maintenance has been passed on 04.11.2016. The revision petitioner/husband has been directing the proceedings without paying any amount by showing the pendency of O.S.No.183/2006, before the Sub Court, Tiruppur. The revision petitioner/husband has manage to got M.C.No.4/2012, pending on the file of the Family Court, Tiruppur, to be dismissed, further, after having been set ex parte in O.S.No.183/2006, the revision petitioner/husband has filed the petition, to set aside the ex parte order and the ex parte order had been setting aside, after two years and the suit in O.S.No.183/2006 is pending has rightly pointed out by the courts below, the Provisions of the Protection of Woman from Domestic Violence Act, 2005, she had in addition to, and not any derogation of the provisions of any other law, for the judgment being in force.

13. In the Hon'ble Apex Court, reported in (2015) 5 SCC 705, in Shamima Farooqui v. Shahid Khan has held that speedy disposal of the application for maintenance is essential and belated disposal without grant of interim maintenance cannot be justified. It has further held that in case of delay caused by dilatory tactics adopted by parties, the Court should endeavour to curtail such designed procrastination of proceedings in this Court as stated above. The revision petitioner/husband has been attempting to scuttle the process by one way or other to effect payment of amount to the wife.

14. I do not find any infirmity in the order passed by the Trial Court as well as the Appellate Court finding that the respondent/wife has not been maintained by the revision petitioner/husband and thereby, have rightly granted the interim maintenance, at the rate of Rs.15,000/- per month.

15. In view of the above, Criminal Revision is dismissed and the order passed by the courts below is confirmed and the revision petitioner is directed to pay the maintenance amount fixed by the courts below regularly.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To:

1. The Judicial Magistrate No.6, Coimbatore.
2. The I Additional District and Sessions Judge, Coimbatore.

+1 CC to Mr.S. Saravanan, Advocate sr 92015

+1 CC to Mr.K.Gandhikumar, Advocate sr 91694.

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Cr1.R.C.No.30 of 2017

RSV(CO)
SP(05/12/2019)