

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Cr1.RC.No.1124 of 2018
Cr.MP.Nos.13094/2018 and 5136 of 2019

1.M.B.Siddiq
2.Meeral Buhari

Petitioners/Appellants

Vs

S.Sahira Fathima

Respondent /Respondent

Prayer:- This Criminal Revision Petition has been filed, under Sections 397 and 401 of Cr.PC, to set aside the order dated, 9.8.2018, made in Cr.MP.No.3201 of 2017 in CA.No.234 of 2017, by the Principal Sessions Judge, Chennai.

For Petitioners : Mr.K.Mohanamurali

For Respondent : Mr.G.Balasubramanian

ORDER

- 1.This Criminal Revision Petition has been filed to set aside the order dated, 09.08.2018, made in Cr.MP.No.3201 of 2017 in CA.No.234 of 2017, by the Principal Sessions Judge, Chennai, dismissing the said petition filed by the Petitioners, seeking permission to raise additional evidence in the appeal.
- 2.This court heard the learned counsel on either side and also perused the materials placed on record.
- 3.The facts of the case, in a nutshell, are that the Respondent/ wife had filed DVC.No.9 of 2017 under Section 12 of the Protection of Women from Domestic Violence Act, before the XVI Metropolitan Magistrate, George Town, Chennai. The court below had passed an exparte order, dated 19.04.2017, setting the Petitioners exparte, directing the Petitioners to pay a sum of Rs.1,00,000/- as compensation to the Respondent for the domestic violence meted out to her, within a period of two months from the date of the order. The Petitioner were also directed to return all the educational and other certificates, gold jewels and all household articles, including electronic items, such as fridge, washing machine, mixer grinder, grinder, etc. and other items given to her by her parents at the time of the marriage. As against the said exparte order, the

Petitioners had filed CA.No.234 of 2017 before the Principal Sessions Judge, Chennai. During the pendency of the appeal, the Petitioners have filed a petition in Cr.MP.No.3201 of 2017 under Section 391 of Cr.PC to permit them to raise additional evidence in the appeal. The appellate court had dismissed the petition, by the impugned order, dated, 9.8.2018. Hence, this Criminal Revision Case has been filed, seeking the relief as stated above.

- 4.This Court, by order dated, 21.08.2019, had directed the Petitioners to deposit a sum of Rs.2,00,000/- to the credit of DVC.No.9 of 2017, on the file of the XVI Metropolitan Magistrate, George Town, Chennai and further observed that on such deposit, the exparte order dated, 19.04.2017, would be considered and the matter would be remanded back to the Trial Court. The matter was posted on 29.08.2019 for reporting compliance. When the matter was posted on 29.08.2019, for reporting compliance, at the request of the learned counsel for the Petitioner, further time was extended till 06.09.2019, for complying with the order dated, 21.08.2019 and the matter was ordered to be posted today, i.e. 09.09.2019.
- 5.The learned counsel for the Petitioners would submit that in due compliance of the order dated, 21.08.2019, a sum of Rs.2 lakhs had been deposited to the credit of DVC.No.9 of 2017, on the file of the XVI Metropolitan Magistrate, George Town, Chennai. He would further submit that the order passed by the XVI Metropolitan Magistrate, George Town, Chennai is an exparte order, as against which, CA.No.234 of 2017 is pending before the Principal Sessions Judge, Chennai and that though the petition had been filed under Section 391 of Cr.PC, praying to permit the Petitioners to raise additional grounds, the appellate Court, without considering the necessity of letting in evidence, had dismissed the same and that both the courts below, without providing sufficient opportunity to the Petitioners, have held against the Petitioners and that either the Petitioners should be allowed to let in evidence or the orders, setting the Petitioners exparte passed by the Trial Court is to be set aside.
- 6.At this juncture, the learned counsel for the Respondent would submit that he has no objection in the exparte order, dated 19.04.2017, in DVC.No.9 of 2017, passed by the XVI Metropolitan Magistrate, George Town, Chennai, being set aside and that the case may be remitted back to the Trial Court and a direction may be issued to complete the proceedings within a time frame.
- 7.Considering the facts and circumstances and the submissions of the learned counsel on either side, the impugned order, dated, 09.08.2018, made in Cr.MP.No.3201 of 2017 in CA.No.234 of 2017, by the Principal Sessions Judge, Chennai and the exparte order, dated 19.04.2017, made in DVC.No.9 of 2017, passed by the XVI Metropolitan Magistrate, George Town, Chennai, are set aside.

The XVI Metropolitan Magistrate, George Town, Chennai is directed to take up the case in DVC.No.9 of 2017 on its file and conduct the trial and dispose of the same, within a period of four months from the date of receipt of a copy of this order. In the mean while, the Respondent/ wife is permitted to withdraw 50% of the amount deposited before the XVI Metropolitan Magistrate, George Town, Chennai, by filing appropriate application.

- 8.Further, in view of the above, the proceedings in CA.No.234 of 2017 on the file of the Principal Sessions Judge, Chennai, stands terminated. The Principal Sessions Judge, Chennai shall return the entire bundles in CA.No.234 of 2017, to the file of XVI Metropolitan Magistrate, George Town, Chennai.
- 9.With the above directions, this Criminal Revision Case is disposed of. Consequently, the connected MPs are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Srcm

To:

- 1.The Principal Sessions Judge, Chennai.
- 2.The XVI Metropolitan Magistrate,
George Town, Chennai.
- 3.The Chief Metropolitan Magistrate,
Egmore, Chennai.
- 4.The Public Prosecutor,
High Court, Madras

+1cc to Mr.K.Mohana Murali, Advocate, S.R.No. 77684
+1cc to Mr.G.Balasubramanian, Advocate, S.R.No. 78209

Cr1.RC.No.1124 of 2018

BS(CO)
GN(15/10/2019)