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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.R.C.(MD)No.334 of 2013 and

CRL.O.P.(MD)No.19612 of 2018 and

M.P.(MD)Nos.3 & 4 of 2014 &

CRL.M.P.(MD)Nos.8937 & 8938 of 2018

CRL.R.C.(MD)No.334 of 2013

1.Dr.T.Sathishkumar

2. A.Thangamani

3. M.Lakshmi

.. Revision petitioners/
Appellants/Respondents

Vs.

Dr.Chindhiya

.. Revision respondent/Petitioner/
Complainant

Prayer : This Criminal Revision petition is filed under Section 397 r/w 401 of Cr.P.C., to admit the Revision and call for the records relating to the order passed by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur, in C.A. No.129 of 2011 dated 05.02.2012 and also set aside the impugned order passed by the learned Judicial Magistrate No.2, Srivilliputhur, in Cr.M.P.No.10509 of 2010 dated 06.08.2011.

For Petitioners	: Mr.Veerakathiravan, Senior Counsel, for Mr.G.Mariappan.
For Respondent	: Mr.C.Masilamani

CRL.O.P.(MD)No.19612 of 2018

1.Dr.T.Sathishkumar

2. A.Thangamani

3. M.Lakshmi

.. Petitioners/
Accused Nos.1 to 3

Vs.

Dr.Chindhiya

.. Respondent/Complainant

Prayer : This Criminal Original petition is filed under Section 482 of Cr.P.C., calling for the records relating to the proceedings in D.V.No.6 of 2018 on the file of the learned Judicial Magistrate No.II, Srivilliputhur and quash the same as far as the petitioners/accused No.1 and 3.



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(in both cases)
For Petitioners

: Mr.Veerakathiravan,
Senior Counsel,
for M/s.Veera Associates.

For Respondent

: Mr.C.Masilamani

COMMON ORDER

Dr.Chindhiya and Dr.Sathishkumar got married to each other at Thirupathy on 30.08.2009. Unfortunately, the two separated in January 2010 itself. Dr.Chindhiya filed Cr.M.P. No.10509 of 2010 before the learned Judicial Magistrate No.2, Srivilliputhur, under the provisions of the Protection of Women from Domestic Violence Act. By order dated 06.08.2011, the learned trial Magistrate granted as many as four reliefs in favour of Dr.Chindhiya. Not satisfied with the same, Dr.Chindhiya and his parents filed C.A.No.129 of 2011 before the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur. By order dated 05.12.2012, the appellate Court dismissed the Criminal Appeal. Aggrieved by the same, this Criminal Revision has been filed.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the complainant.

3. The learned trial Magistrate granted the following four reliefs:-

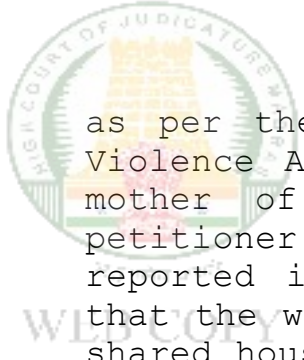
a) Protection order under Section 18(a) of the Protection of Women from Domestic Violence Act.

b) Residential order under Section 19(1)(a) of the Protection of Women from Domestic Violence Act.

c) Directing payment of a sum of Rs.5,000/- as monthly maintenance.

d) to pay a sum of Rs.1,00,000/- as compensation under Section 22 of the Protection of Women from Domestic Violence Act.

4. As regards the grant of the protection order under Section 18 of the Act, I am of the view that no exception can be taken. Of course it is made clear that merely because this order is affirmed, it does not mean that the petitioners had actually committed the acts of domestic violence. Dr.Chindhiya and Dr.Sathishkumar set up their matrimonial home at H.I.G. 774, Tamil Nadu Housing Board, 4th Main Road, Velacherry, Chennai - 42. It is in respect of this house, the residential order had been obtained



as per the provisions of the Protection of Women from Domestic Violence Act. It is admitted that the said house belongs to the mother of Dr.Sathishkumar that is Lakshmi who is the third petitioner herein. The Hon'ble Supreme Court in the decision reported in (2007) 3 SCC 169(S.R.Batra V. Taruna Batra) held that the wife is only entitled to claim a right to residence in a shared household, and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. In this case the property in question belongs to M.Lakshmi. Therefore, in respect of such house, residential order could not be passed. This Court has no hesitation to set aside the residential order passed by the Court below in favour of the complainant under Section 19(1)(a) of the Protection of Women from Domestic Violence Act.

5. Next, comes to the validity of the direction to make payment of Rs.5,000/- as maintenance. It is not in dispute that the respondent had separated from the husband from 10.01.2010. She had of course joined the Government service on 09.02.2011. The order to pay the maintenance will have to be therefore modified. The liability of Dr.Sathishkumar to pay the amount of Rs.5,000/- as monthly maintenance will be taken to the period from 09.01.2010 to 09.02.2011. Dr.Sathishkumar is not liable to maintain the complainant Dr.Chindhiya, after 09.02.2011, when she has joined Government service. The order passed by the Courts below for payment of maintenance is accordingly, modified. The Courts below has directed the petitioners herein to pay a sum of Rs.1 Lakh as compensation under Section 22 of the Protection of Women from Domestic Violence Act. The said amount has since been deposited and it appears that it has already been withdrawn.

6. I am of the view that this Court does not call for any interference. However it is made clear that the case filed by Dr.Sathishkumar or filed against Dr.Sathishkumar will have to be dealt with by matrimonial Courts independently or on their own merits, dehors the outcome of the Criminal Revision.

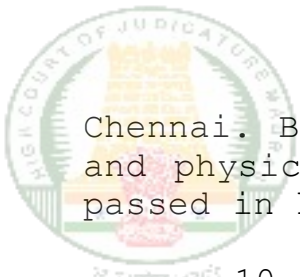
7. With these observations, the Criminal Revision stands partly allowed. No costs. Consequently, connected Miscellaneous petitions are closed.

8. CRL.O.P.(MD)No.19612 of 2018

D.V.No.6 of 2018 on the file of the learned Judicial Magistrate No.2, Srivilliputhur, has been filed by Dr.Chindhiya alleging violation of residential order passed in her favour on 06.08.2011 in Cr.M.P.No.10509 of 2010 on the file of the learned Judicial Magistrate No.2, Srivilliputhur.

<https://hcservices.ecourts.gov.in/hcservices/>

9. The case of the complainant is that she was granted residential order and that to enforce the same, she went to



Chennai. But then, the respondents in D.V.No.6 of 2018 abused her and physically harassed her and refused to comply with the order passed in her favour.

10. As rightly pointed out by the learned counsel appearing for the complainant, the residential order passed in favour of the complainant was not stayed in Crl.R.C.(MD)No.334 of 2013. The order directing payment of maintenance and compensation alone was stayed in Crl.R.C.(MD)No.334 of 2013. Even the learned Senior counsel appearing for the petitioners in Crl.O.P.(MD)No.19612 of 2018 could not produce a copy of the order staying the residential order passed in favour of the complainant. Therefore, the conduct of the petitioners herein cannot be appreciated.

11. Technically speaking D.V.No.6 of 2018, on the file of the learned Judicial Magistrate No.2, Srivilliputhur, was rightly instituted. But then, when the residential order has been set aside later, I am of the view that no purpose will be served in permitting the continuation of D.V.No. 6 of 2018 on the file of the learned Judicial Magistrate No.2, Srivilliputhur. Permitting D.V.No.6 of 2018 to continue would be an abuse of process, when the primary residential order itself has been set aside.

12. In this view of the matter, the impugned proceedings in this Criminal Original petition stand quashed and Crl.O.P.(MD) No.19612 of 2018 stands allowed. It is submitted that Dr.Chindhiya had filed a petition for conjugal rights and that Dr.Sathishkumar has filed a petition for divorce against Dr.Chindhiya. Both the petitions shall be dealt with independently on their own merits. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Principal Sessions Judge,
Virudhunagar District at Srivilliputhur.

2. The Judicial Magistrate No.2,
Srivilliputhur.

3. Do Through:

<https://hcservices.hcscourts.gov.in/hcservices>
The Chief Judicial Magistrate
Virudhunagar District at Srivilliputhur



3. The Section Officer, -2 copies
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.G.MARIAPPAN, Advocate (SR-77481[F] dated
25/07/2019)

+1 CC to M/s.C.MASILAMANI, Advocate(SR-77795[F] dated
26/07/2019)

+1 cc to M/s.Veera Associates , Advocate SR.No.77480

pmu

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