



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE **V.PARTHIBAN**

Crl.R.C. (MD)No.100 of 2019

and

Crl.M.P(MD)No.1895 of 2019

WEB COPY

1.Pradeep Sankar
2.Jeevanandam
3.Dhanalakshmi
4.Veerammal
5.Pon Amirtharaj

: Petitioners/Respondents/Respondents

Vs.

Manoranjitham

: Respondent/Appellant/Petitioner

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for the records and set aside the order passed by the Additional Sessions Court, Karur in Crl.A.No.47 of 2018 on 25.06.2018.

For Petitioners : Mr.M.Jothi Basu

For Respondent : Mr.S.Deenadayalan

O R D E R

This criminal revision is filed against the order passed by the lower appellate Court in C.A.No.47 of 2018 dated 25.06.2018 allowing the appeal filed by the respondent herein convicting the petitioners under Section 18 of the Domestic Violence Act and directing the petitioners herein not to indulge in domestic violence and further directing the petitioners to return the 10-1/2 sovereigns of jewels together with Rs.2,00,000/- dowry paid at the time of wedding and also Rs.2,00,000/- being the expenses for the marriage conducted and Rs.1,50,000/- towards costs under the provisions of Domestic Violence Act.

2.According to the petitioners herein, originally the trial Court which heard the matter, has passed an order in DVOP No.8 of 2014 dated 06.04.2018 dismissing the complaint filed by the respondent herein stating that the respondent herein did not make out any case at all. The order of the trial Court was in favour of the petitioners herein. As against that, an appeal was filed before the lower appellate Court. When the Court notice was sent, the same was inadvertently refused to be accepted on behalf of the petitioners herein.

3.According to the learned counsel for the revision petitioners, the petitioners came to know about the proceedings from some other person and they did not receive any notice. Their non appearance in the appeal proceedings was neither wilful nor wanton.



Unfortunately, the lower appellate Court, without taking any assistance of a lawyer, has simply passed an order convicting the petitioners without hearing them.

4. In support of his contention, the learned counsel would draw the attention of this Court to the decision reported in **2019(4) CTC 606 [Christopher Raj vs. K.Vijayakumar]**. In that case, the Hon'ble Supreme Court of India has held that in the absence of the counsel for accused, the High Court should have issued second notice to the accused or should have appointed a legal aid counsel or should have taken assistance of an *Amicus curiae*. The Hon'ble Supreme Court has held that reversal of acquittal without giving an opportunity of hearing to the accused is erroneous and hence, the order of High Court was set aside.

5. In this case, obviously, no second notice was issued to the petitioners nor legal aid counsel was appointed nor the services of an *Amicus curiae* was sought to assist the Court before the Judgment was delivered. Unfortunately, without giving any iota of opportunity of hearing to the petitioners, the conviction was recorded by the appellate Court, thereby gravely affecting the rights of the petitioners herein irretrievably. Therefore, the petitioners are constrained to move the present criminal revision.

6. Mr. S. Deenadhayalan, learned counsel was heard for the respondent. According to the learned counsel, when the notice was sent, the same was refused by the petitioners knowing fully well about the contents of the notice. Therefore, having taken a decision in not accepting the notice, it was not open to these petitioners to contend that they were not even heard before the order came to be passed by the appellate court. Therefore, the appellate Court was left with no option except to proceed with the appeal and passed order on the basis of the merits of the arguments advanced by the respondent herein. Therefore, the order passed by the appellate Court does not call for any interference.

7. I have considered the submission made on behalf of the petitioners as well as the respondent and also perused the decision cited on behalf of the petitioners.

8. Although the trial Court has given a clear verdict and acquitted the petitioners from the charges under the provisions of Domestic Violence Act, yet the appellate Court has overturned the verdict and convicted the petitioners and gave series of directions as mentioned above. As rightly contended by the learned counsel for the petitioners, the appellate Court ought to have issued second notice to the petitioners or ought to have appointed legal aid counsel or taken assistance from *Amicus curiae* before passing the order and judgment convicting the petitioners herein. In the



absence of hearing the petitioners, the right to fair trial was affected and therefore, the impugned order and Judgment of the appellate Court is liable to be interfered with on the said short ground alone. When the conviction is recorded, it is imperative on the part of the appellate Court to ensure that the person, who was convicted, was given opportunity of hearing. Unfortunately, in this case, the appellate Court did not chose to adopt such fair procedure which is mandatory and the non-following of the said procedure is to the detriment of the petitioners herein, which warrants setting aside the impugned order.

9. For the above said reasons, this Court is of the view that the order of the appellate Court is liable to be interfered with and hence, the Judgment in Crl.A.No.47 of 2018 dated 25.06.2018 passed by the Additional Sessions Court, Karur is hereby set aside and the matter is remanded back to the appellate Court for fresh consideration. After giving notice to all the parties concerned and after hearing all the parties, the appellate Court is directed to pass appropriate orders on merits and in accordance with law within a period of 60 days from the date of receipt of a copy of this order.

10. According to the learned counsel for the respondent, as on date, approximately Rs.50,000/- is due towards maintenance to be paid to the wife by the petitioner/husband. Since the petitioners herein have not chosen to appear at the first instance before the appellate Court and thereafter, now the matter is being remanded to the appellate Court, the petitioner/husband is directed to pay a sum of Rs.50,000/- to the respondent/wife within a period of three weeks from the date of receipt of a copy of this order. In case the amount is not paid within the time stipulated, it is open to the appellate Court to issue appropriate direction to the petitioner/husband in this regard.

11. The criminal revision petition is disposed of to the extent indicated above. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar (CS)

To

The Additional Sessions Court, Karur.

+1 CC to M/s.S.DEENADHAYALAN, Advocate SR-94292

+1 CC to M/s.G.M.LAW OFFICE, Advocate SR-94450

ORDER MADE IN

Crl.R.C.(MD)No.100 of 2019 and

Crl.M.P(MD)No.1895 of 2019

Dated:- 24.10.2019

SKN

SMA/16/12/19/3P/4C

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