



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:29.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.R.C(MD)No.372 of 2014

WEB COPY

1.P.M.A.Khaja Mohideen

2.Thammem Nisha

...Petitioners / Accused 1 & 2

Vs

Thasmi Begum

...Respondent / Complainant

PRAYER: Criminal Revision Cases have been filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records relating to the order dated 14.08.2013 made in Crl.A.No.15 of 2013 on the file of the Sessions Judge, Trichy modified order dated 01.04.2013 in Cr.M.P.No.7 of 2011 Judicial Magistrate Court No.V, Trichy and set aside the same as illegal and allow this criminal revision.

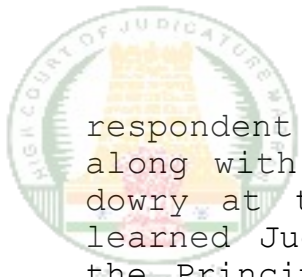
For petitioner : Mrs.Thameem Nisha
(2nd petitioner)

For Respondent : Mr.S.Ravi, Legal Aid Counsel

ORDER

This criminal revision case has been filed as against the concurrent findings of the learned Judicial Magistrate No.V, Tiruchirappalli in Cr.M.P.No.7 of 2011 and the order of Sessions Judge, Tiruchirappalli in C.A.No.15 of 2013, on the complaint filed by the respondent under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

2.The brief facts of the case are that first petitioner is the husband of the respondent / complainant and second petitioner is the sister of the first petitioner. The marriage between the first petitioner and the respondent was solemnised on 02.11.1997. Thereafter, out of certain misunderstandings, they lived separately. The respondent filed a petition under Sections 20 and 21 of the Protection of Women from Domestic Violence Act, 2005, before the Social Welfare Officer that she was driven out of the matrimonial home, retaining the jewels and cash given to her at the time of marriage. She demanded for the return of articles listed in the petition and cash of rupees thirty thousand given at the time of marriage and also for the maintenance and compensation of rupees ten lakh from the petitioners. The Social Welfare Officer after conducting enquiry, forwarded the petition to the learned Judicial Magistrate No.V, Tiruchirappalli for further action and the same was taken on file by the learned Judicial Magistrate in Cr.M.P.No.7 of 2011. In conclusion of the trial, the learned Judicial Magistrate No.V, by his order dated 01.04.2013 directed the petitioners to pay a sum of rupees ten lakh to the respondent complainant towards compensation with interest at 9% per annum from the date of the order and the learned Judicial Magistrate has also observed that the



respondent / complainant is entitled for the list of jewels filed along with the petition and also a sum of thirty thousand given as dowry at the time of the marriage. As against the order of the learned Judicial Magistrate, the petitioners filed an appeal before the Principal Sessions Court, Tiruchirappalli in C.A.No.15 of 2013 and the appeal was partly allowed by setting aside the order of compensation of rupees ten lakh with interest and confirmed the order with regard to the return of jewels and a sum of rupees thirty thousand and as against the concurrent findings, the petitioners have filed the present revision case in the year 2014.

3. When the matter was taken for hearing in the year 2017, a representation was made that there is a chance for settlement and the matter can be referred to mediation. Accordingly, by order dated 18.07.2017, this Court referred the matter to the Mediation and Conciliation Centre, attached to this Bench and before the mediation the appellants have agreed to return three sovereign of chain and rupees thirty thousand, but they returned only rupees thirty thousand and the matter was referred back to the Court.

4. Mr. A. Hajamohideen, learned Counsel for the respondent filed a memo dated 05.08.2019 that he is withdrawing his appearance for the respondent and therefore, this case was listed by printing the name of the respondent and since there was no representation for the respondent, this Court by order dated 18.09.2019 appointed Mr. S. Ravi, learned Counsel, who is having 25 years of practice in criminal side before this Court, as Legal Aid Counsel to defend the respondent in this case, but, the learned Counsel for the petitioners have taken very many adjournments and therefore, this case was posted under the caption 'for orders'.

5. On 16.10.2019, it was represented that the first petitioner became insane and therefore, the learned Counsel for the petitioners represented that he was not in a position to get any instructions from his client and therefore, this Court by order dated 16.10.20019, directed the learned Additional Public Prosecutor, to secure the petitioners and the respondent and to produce them before this Court on 04.11.2019 and the petitioners and the respondent were present before this Court on 18.11.2019 and the matter was also heard in full.

6. Mr. S. Ravi, learned Legal Aid Counsel appearing for the respondent by relying upon ExP.6, ExP.7 and ExP.8 would submit that the petitioners before Jamadh as well as before the Social Welfare Officer, have admitted the possession of 127 grams of gold of the respondent is with them and also pointed out the conduct of the petitioners in dragging the matter from the year 2009. When this Court was about to dismiss this revision case and to pass final orders, the learned Counsel for the petitioners came forward with an



offer to settle the issue by returning 127 grams of the gold jewels, provided if reasonable time is granted to them, for which, respondent has also agreed.

7. In view of the submissions made by the petitioners before this Court, for enabling the learned Counsel for the revision petitioners to file an affidavit to that effect, the matter was adjourned to 25.11.2019. On 25.11.2019, a representation was made on behalf of the revision petitioners that the second petitioner's husband was hospitalised and therefore, they needed some more time for filing the affidavit and at their request the matter was adjourned to 29.11.2019.

8. Today, when the matter was taken for hearing, the learned Counsel for the petitioners represented that he has filed a memo withdrawing his Vakalath as per the request of the petitioners and the petitioners are also present before this Court and at that time Mr. Madhavan, learned Counsel representing Mr. V. Narayanan has submitted that the petitioners have entrusted the case to Mr. V. Narayanan to defend their case and sought time to file vakalath. When this Court explained the proceedings, which had taken place in the past several hearings, he recused to appear in this case and therefore, the petitioners were heard.

9. The second petitioner as party in person has appeared before this Court and submitted that the jewels are not with them and they have never accepted in any of the proceedings that the jewels are with them and they are not liable to return 127 grams of gold as found by the learned Judicial Magistrate.

10. When it was pointed out to the petitioners about Exp.6, wherein she has admitted her liability and also signed before the Jamadhars, the second petitioner after perusing it, admitted that the signature found therein is her signature. But, she has stated that the said signature was obtained in a fraudulent manner and it was her mother, who admitted before the Jamadh and the second petitioner as the daughter of Nabisa Begam, has signed the document only as a witness to the document. With regard to the letter of Jamadhars, which were marked as Exp.7 and Exp.8 are concerned, the second petitioner has admitted that the Jamadhars are not having any enmity as against the petitioners.

11. Considering Exp.6, Exp.7 and Exp.8 filed before the trial Court, it is evident that the petitioners have admitted the possession of 127 grams of gold of the respondent with them during the enquiry before the Jamadhars. The letters Exp.7 and Exp.8 of the Jamadhars would disclose the conduct of the revision petitioners in evading the return of jewels from the year 2009 and the conduct of the revision petitioners before this Court also would reveal that the petitioners are purposely dragging the return of jewels to the



respondent / complainant.

12.Mr.S.Ravi, learned Counsel for the respondent has also pointed out that the ground taken by the revision petitioners is taken out for the first time before this Court and it was not pleaded either before the trial Court, appellate Court or in the present revision petition.

13.In view of the discussion held above, this criminal revision case is liable to be dismissed. However, this Court grants six weeks of time for the revision petitioners to return 127 grams of gold jewels to the respondent from the date of receipt of a copy of this order.

14.In case of any failure on the part of the petitioners in complying with the order, the learned Judicial Magistrate No.V, Tiruchirappalli shall proceed in accordance with Section 31 of the Protection of Women from Domestic Violence Act and take necessary action to recover the jewels from the revision petitioners.

15.In the result, the revision case is dismissed on the above terms. Before parting with this case, this Court places on record the sincere efforts taken by Mr.S.Ravi, Legal Aid Counsel, appearing for the respondent in this case. In view of the conduct of the revision petitioners, though this case was adjourned for several hearings, Mr.S.Ravi was present in all the hearings and defended the respondent effectively and therefore, the Legal Services Authority of this Court is directed to pay a sum of Rs.10,000/- (rupees ten thousand) as fee for his services.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

dsk

To

1.The Principal Sessions Judge,Tiruchirappalli.

2.The Judicial Magistrate No.V,Tiruchirappalli.

Copy to: The Secretary, Legal Service Authority,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S.RAVI, Advocate (SR-102643[F] dated 29/11/2019)

Cr1.R.C(MD)No.372 of 2014

29.11.2019

SMA/27/12/19/4P/5C