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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl. R.C. No.61 of 2014

and

M.P.No.1 of 2014

G.K.Elumalai ... Revision Petitioner/Appellant/Respondent

Vs.

1.Samundeswari

2.The Protection Officer,
(Domestic Violence Act)
District Social Welfare Officer,
Thiruvallur. ... Respondents/Respondents/Petitioners

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the judgment, dated 19.09.2013, passed by the I Additional Sessions Judge, Tiruvallur, in C.A.No.57 of 2012, confirming the judgment, dated 27.09.2011, passed by the Judicial Magistrate No.I, Tiruvallur, in C.C.No.283 of 2010.

For Petitioner : Ms.E.Yuvarani
for M/s.R.Poornima

For R1 : Mr.V.Ramana Reddy

For R2 : Mr.R.Surya Prakash
Government Advocate (Crl. Side)

O R D E R

This Criminal Revision Case has been filed against the judgment, dated 19.09.2013, passed by the I Additional Sessions Judge, Tiruvallur, in C.A.No.57 of 2012, confirming the judgment, dated 27.09.2011, passed by the Judicial Magistrate No.I, Tiruvallur, in C.C.No.283 of 2010.

2.For the sake of convenience, the parties will be referred to by their name.

3.Elumalai got married to Samundeswari on 22.11.2001 and after marriage, they were residing in Door No.169, Railway Station Road, Korattur. At the time of marriage, the parents of Samundeswari gave her six sovereigns of gold and other



household articles. The couple was not blessed with a child. Samundeswari alleged that Elumalai would come home drunk. She further alleged that, on 07.12.2009, Elumalai came drunk and held her by her neck, hit her on the wall, and caused serious injuries to her. She complained to the local police and thereafter, started living with her parents. She lodged a complaint with the Protection Officer under Protection of Women from Domestic Violence Act, 2005 ("D.V. Act" for brevity), and an enquiry was conducted by him, after which, he submitted a report to the Judicial Magistrate No.I, Tiruvallur, stating that, Samundeswari had suffered domestic violence at the hands of Elumalai. Hence, the report was taken on file as C.C.No.283 of 2010 by the Judicial Magistrate No.I, Tiruvallur, under the provisions of D.V. Act and enquiry was conducted.

4.In the enquiry, Samundeswari examined herself as P.W.1 and marked Exs.P1 to P7. The Protection Officer was examined as P.W.2. Elumalai examined himself as R.W.1 and marked Exs.R1 to R3.

5.After considering the evidence on record and hearing either side, the trial Court, by order dated 27.09.2011, in C.C.No.283 of 2010, granted the following reliefs to Samundeswari :

- i. Elumalai shall pay Rs.3,600/- per month from the date of petition as maintenance to Samundeswari;
- ii.Elumalai shall return the jewels and also the articles of Samundeswari;
- iii.Elumalai shall provide accommodation in terms of Section 19 of the D.V. Act for Samundeswari.

6.Challenging the order, Elumalai filed C.A.No.57 of 2012, which was heard by the I Additional Sessions Judge, Tiruvallur, and the same was dismissed on 19.09.2013.

7.Aggrieved by the concurrent findings of the two Courts below, Elumalai has filed the present Criminal Revision Case, before this Court, under Section 397 r/w. 401 Cr.P.C., through M/s.R.Poornima.

8.At the time of admission, this Court passed the following order on 23.01.2014 in M.P.No.1 of 2014 in CrI.R.C.No.61 of 2014 :

"2.It appears that the petitioner has not made any payment till date. Therefore, the interim stay is granted on condition that the petitioner, in order to show his bonafide, shall deposit 50% of the arrears amount to the credit of C.C.No.283 of 2010 on the file of the Judicial Magistrate No.I, Tiruvallur, within a period of four weeks from the date of receipt of a copy of this order, failing which, the interim stay granted shall stand vacated automatically without any reference to the Court.



On such deposit, the first respondent wife is at liberty to withdraw the same.

3. Notice returnable in two weeks. Private notice is also permitted.

4. Post after two weeks."

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9. Today, when the matter was taken up for hearing, Ms. E. Yuvarani (Enrollment No. 2704 of 2019), Junior of Mrs. R. Poornima, counsel on record for Elumalai (petitioner), submitted that the party has taken back the bundle and therefore, reported "no instructions". The name of Elumalai is printed in the cause list and was called out thrice by the Court Usher, but to no avail. Therefore, this Court meticulously perused the records.

10. It is trite that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court [See State of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand and Others, etc. (2004) 7 SCC 659]. Very recently, in Bir Singh vs. Mukesh Kumar [(2019) 4 SCC 197], the Supreme Court has held as under:

"17. As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457], it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. "

(emphasis supplied)

11. Samundeswari (P.W.1), in her evidence, has stated that she got married to Elumalai on 22.11.2001; at the time of marriage, her parents gave her six sovereigns of gold and other household articles; after marriage, she lived with Elumalai in Door No. 169, Railway Station Road, Korattur; Elumalai would come drunk and demand money from her; he took away her jewels, pledged them, and used that money for drinking; on 07.12.2009, he came drunk, caught hold of her neck and dashed her against the wall, resulting in bleeding injuries to her; she went and lodged a complaint to the police and thereafter, she started living with her parents.

12. Elumalai has denied the allegations and has stated that he has filed a petition for divorce in H.M.O.P.No.39 of 2010 before the Sub-Court, Poonamallee; he is running a welding shop, and it is loss-making. He further contended that the complaint given by his wife was closed by the police.

13. It may be apposite to extract Para No.17 of the order of the appellate Court, as under :



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"17.As stated earlier, the incident has happened on 06.12.2009 night hours. Though husband RW1 stated it was happened on 07.12.2009. Let it be. As per the evidence on 06.12.2009 night hours the husband came to the house in a drunken condition like that the husband also admitted he beaten the wife. As per the evidence of both the litigate parties the incident is clearly proved. The husband has committed violence on the woman. Though she is a wife, the husband has no right or business at all to attack his wife. A man has no right to attack his wife. As per Ex.P3 and Ex.P5 as stated earlier the jewels were pledged on 17.09.2009. Within 2 ½ months the problem arose between husband and wife, therefore, the wife lodged a complaint before the police station, which is evident from Ex.P4 C.S.R. Copy."

14.A reading of the evidence of Samundeswari (P.W.1) shows that she was beaten on 06/07.12.2009 by her husband Elumalai, who was in inebriated state and that is why, she rushed to the Police Station and lodged the complaint. The receipt given by the police for the complaint was marked as Ex.P4. That apart, Samundeswari has marked the receipts Exs.P3 and P5 to show that her jewels had been pledged by Elumalai.

15.In the teeth of such overwhelming evidence, it cannot be stated that Samundeswari did not suffer domestic violence. In fine, this Court does not find any infirmity in the concurrent findings of the two Courts below, warranting interference.

As a result, this Criminal Revision Case is dismissed and the order of the two Courts below are confirmed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

mkn

1.The I Additional Sessions Judge,
Tiruvallur.

2.The Judicial Magistrate No.I,
<https://hcservices.ecourts.gov.in/hcservices/>
Tiruvallur.



3. The Chief Judicial Magistrate,
Tiruvallur (For Information)

4. The Protection Officer,
(Domestic Violence Act)
District Social Welfare Officer,
Thiruvallur.

5. The Public Prosecutor,
High Court, Madras.

Copy To
The Section Officer,
Criminal Section Record,
High Court, Madras.

Crl. R.C. No.61 of 2014
and
M.P.No.1 of 2014

NR(CO)
GMY(11/09/2020)