



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.03.2020**

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.R.C.[MD]No.460 of 2015

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Vijayalakshmi : Petitioner

Vs.

Sundarajan : Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records pertaining to Crl.A.No.75 of 2014 order dated 18.03.2015 on the file of II Additional District & Sessions Judge, Thanjavur by confirming the order dated 29.10.2014 passed in M.C.No.12 of 2011, on the file of the Judicial Magistrate No.II, Thanjavur and set aside the same.

For Petitioner : Mr.G.Karnan

For Respondent : No appearance

O R D E R

This Criminal Revision Case is filed against the judgment in Crl.A.No.75 of 2014 dated 18.03.2015, on the file of the II Additional District & Sessions Judge, Thanjavur by confirming the order dated 29.10.2014 passed in M.C.No.12 of 2011, on the file of the Judicial Magistrate No.II, Thanjavur.

2. The short facts of the case are as follows:-

(i) The petitioner is the wife of the respondent and the marriage of the petitioner as well as the respondent was solemnized on 15.02.2010 at Thanjavur Punnai Nallur Mariammal Temple Thirumana Mandapam and the said marriage was arranged by both family elders.

(ii) The petitioner was informed of the fact that the respondent had earlier married a woman and by the earlier marriage, he has two children. Immediately after the marriage, the respondent left the petitioner at her parental house on 03.01.2011. Thereafter, the respondent did not care about the petitioner and thereby, the petitioner filed a complaint before the Thanjavur All Women Police Station on 06.01.2011 and the Law Enforcing Agency also registered the case and issued summons to the respondent, in which, the respondent appeared before the law enforcing agency and alleged that the petitioner is a psychiatric person.

(iii).Thereafter, the respondent issued a legal notice for divorce on 13.01.2011, for which, the petitioner sent reply on 21.01.2011. However, no further action was taken. Hence, the petitioner went to the house of the respondent along with her



parents on 02.02.2011 and the respondent did not allow the petitioner inside and pushed away the petitioner and her parents.

(iv) Therefore, the petitioner filed a Domestic Violence Case in M.C.No.12 of 2011, in which, the petitioner herself was examined as P.W.1 and marked Exs.P1 to P4. However, the trial Court dismissed the said complaint.

(v) Aggrieved by the said order, the petitioner filed an appeal before the Lower Appellate Court in Criminal Appeal No.75 of 2014. The said appeal was also dismissed. Assailing the concurrent findings of the Courts below, the present revision is preferred by the petitioner before this Court.

3. Mr.G.Karnan, the learned Counsel for the petitioner would submit that admittedly domestic violence was established before the trial Court, by examining the petitioner as P.W.1. and her father as P.W.2. He would further submit that as per Section 19 of the Prevention of Women from Domestic Violence Act, the Magistrate is empowered to pass residential order, when the residence of the wife is refused by the husband. After the marriage between the petitioner / wife and the respondent / husband, only three days the petitioner stayed in the matrimonial home, thereafter, the respondent left the petitioner to her parents' house, complaining that she is a psychiatric person and refuse to take back the wife. But, the Courts below, negatived the claim of the petitioner. Hence, the learned counsel prayed to set aside the order passed by the Court below,

4.The Court heard the submission made by the learned counsel appearing for the petitioner and perused the materials available on record.

5. On perusal of the records it is seen that petitioner is the wife of the respondent and the marriage of the petitioner as well as the respondent was solemnized on 15.02.2010 at Thanjavur Punnai Nallur Mariammal Temple Thirumana Mandapam and the said marriage was arranged by both family elders. Further, the petitioner was informed of the fact that the respondent had earlier married a women and by earlier marriage, he has two children. According to the learned counsel for the petitioner petitioner, after the marriage, the respondent left the petitioner at her parental house, thereafter, the respondent did not care about the petitioner. and thereby, the petitioner filed a complaint before the Thanjavur All Women Police Station on 06.01.2011 and the Law Enforcing Agency also registered the case and issued summons to the respondent, in which, the respondent appeared before the law enforcing agency and alleged that the petitioner is a psychiatric person.

6. It is seen from the records that there was no violence between the petitioner / wife during her stay at matrimonial home



and no complaint has been made either by the petitioner / wife and her father against the respondent / husband, to that effect, before the Law Enforcing Agency. Further, the Courts below have elaborately considered all the contentions raised by the petitioner / wife and came to a conclusion that the petitioner - wife has not made out any case. In exercise of revisional jurisdiction, this Court does not, in the absence of perversity, upset concurrent factual findings. At this juncture, it is relevant to refer the Judgment of the Hon'ble Apex Court in **State of Haryana v. Rajmal**, reported in (2011) 14 SCC 326 : (2012) 3 SCC (Cri) 1328, wherein it has been held as follows:-

9.We are not satisfied with the reasoning of the High Court, as none of the grounds put forward by the High Court in the impugned judgment is sustainable. If we take up the last ground first, it is clear that the aforesaid conclusion of the High Court, being a conclusion on pure questions of fact, is against the evidence on record.

10. The trial court has found that there is cogent evidence on record to show that both the accused persons were known to the witnesses from before and they ran away, by scaling the wall, after seeing the police party. The trial court also recorded a finding of fact that the accused persons have not made out any case of animosity of the official witnesses against them.

11.In the appellate forum, the Sessions Judge has also recorded that PW 3 the investigating officer has clearly stated that he knew the accused persons because he had apprehended them in another case and the said statement of PW 3 was not challenged in cross-examination. Nor have the accused persons ever questioned that the witnesses knew them prior to the date of the occurrence. The appellate forum also recorded that the accused persons have not suggested that they were falsely implicated in the case.

12.In view of this admitted factual position, this Court cannot accept the reasoning of the High Court in its revisional jurisdiction whereby the High Court found that in the absence of any independent local witness the prosecution case is not worthy of credence. The factual conclusion of the High Court is contrary to the evidence on record.



13. In this connection, it may be noted that in upsetting the concurrent finding of the courts below, about the identification of the accused persons, the High Court has not given any reason.

14. In *State of A.P. v. Pituhuk Sreeinvanasa Rao* [(2000) 9 SCC 537 : 2001 SCC (Cri) 642] this Court held that the exercise of the revisional jurisdiction of the High Court in upsetting the concurrent finding of the facts cannot be accepted when it was without any reference to the evidence on record or to the finding entered by the trial court and the appellate court regarding the evidence in view of the fact that revisional jurisdiction is basically supervisory in nature.

15. It has been also held by this Court in *Amar Chand Agarwalla v. Shanti Bose* [(1973) 4 SCC 10 : 1973 SCC (Cri) 651 : AIR 1973 SC 799] that the revisional jurisdiction of the High Court under Section 439 CrPC is to be exercised, only in an exceptional case, when there is a glaring defect in the procedure or there is a manifest error on a point of law resulting in a flagrant miscarriage of justice. (SCC p. 20, para 17 of the Report.)

16. Going by the aforesaid principles, it cannot be held that the interference by the High Court on the question of identification of the accused persons in facts of the case is either proper or legally sustainable.

7. In yet another Judgment, the Hon'ble Apex Court, in ***Bir Singh v. Mukesh Kumar***, reported in **(2019) 4 SCC 197 : (2019) 2 SCC (Cri) 40 : (2019) 2 SCC (Civ) 309** it has been held as follows:-

"16. It is well settled that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

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. The answer to the first question is therefore, in the negative."

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8. Further, the Courts below have elaborately considered all the contentions raised by the petitioner / wife and has given a well-considered judgment and the petitioner - wife has not made out any case both on facts and in law to set aside the judgment of the Courts below. Further, it is not permissible for the High Court to reappreciate the evidence and to arrive at a different finding, unless the concurrent findings are perverse and illegal.

9. Considering the facts and circumstances, there is no corroboration between the evidences of P.W.1 and P.W.2 and there is no proof for domestic violence against the petitioner by the respondent. In the absence of any material, this Court cannot interfere with the concurrent findings and the powers of the revisional Court is very limited, unless the petitioner establishes that there was an error apparent on the face of the record. There is nothing to show that the concurrent findings suffer from perversity or illegality calling for interference.

10. In the result, this Criminal Revision Case stands dismissed.

Sd/-

Assistant Registrar (Crl Side)

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Sub Assistant Registrar(CS)

MR

To

1. The II Additional District & Sessions Judge,
Thanjavur.

2. The Judicial Magistrate No.II,
Thanjavur.

3. The Section Officer,
Criminal Section [Records],
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.G.KARNAN, Advocate (SR-11081[F] dated 11/03/2020)

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KK(24.06.2020) 5P 6C