



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Cr1.R.C(MD)No.708 of 2016

and

Cr1.M.P(MD)No.1007 of 2016

WEB COPY

K.Rengasamy ...Petitioner/ 1st Respondent/1st Respondent

Vs

N.Bhuvaneshwari ...Respondent/Appellant/COMplainant

PRAYER: This Petition filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records to the order dated 13.04.2016 in C.A.No.14 of 2016 passed by the learned Mahalir Neethi Mandram, Fast Track Court, Karur which partly reversed the order passed by the Judicial Magistrate No.1, Kulithalai in D.V.P No.3 of 2012 dated 27.10.2015 and set aside the same.

For petitioner : Mr.B.Rajesh Saravanan

For Respondent : Mr.T.Antony Arul Raj

ORDER

This criminal revision case has been filed as against the order dated 13.04.2016 passed in C.A.No.14 of 2016 on the file the learned Fast Track Mahila Court, Karur.

2.The case of the respondent is that the petitioner Rengasamy and the respondent Bhuvaneshwari are husband and wife and their marriage was solemnised on 14.06.2006 as per their customs and rites. After the marriage, they started living in the matrimonial home. However, after six months, the brother of her husband and his wife demanded six sovereigns of gold and sreedhana articles for Pongal and Demanded Rs.50,000/- for constructing house and agricultural lands from the respondent and also harassed her. When this was informed to her husband, he also asked her to meet out their demand. Further, they also did not permit her to conduct baby shower function inside the matrimonial home and therefore, the wife's parents conducted the baby shower function outside his house and on 31.07.2007, she gave birth to a baby boy namely, Sanjay. However, the husband did not even visit the child for nine months and on the intervention of elders, they started living separately in a rented house. Even thereafter, the husband did not take care of her and their child and made them to suffer from hunger. He had driven them to her parents' house asking her to fulfil his earlier demand.



3. Under such circumstances, the wife lodged a complaint on 23.08.2008 to the All Women Police Station, Kulithalai, before which, the husband, returned all her sridhaha articles except 1½ sovereigns of gold jewels. Thereafter, the husband married one Mahalakshmi. On knowing this, the wife lodged a complaint before the Social Welfare Department, on 22.12.2011, wherein the husband admitted to give his property share to the child, but did not do so. At this juncture, the respondent wife filed a petition in D.V.Act.03 of 2012 before the learned Judicial Magistrate No.I, Kulithalai, as against her husband, his brother and his wife, seeking, shared household, maintenance and compensation.

4. The learned Judicial Magistrate No.I, Kulithalai by order dated 27.01.2015 dismissed the petition mainly on the ground that the above petition has been filed very belatedly after seven years.

5. As against the order of dismissal, the respondent wife filed an appeal in C.A.No.14 of 2016 before the learned Fast Track Mahila Court, wherein, the learned Sessions Judge, partly allowed the appeal by directing the petitioner/husband to pay a sum of Rs.50,000/- as compensation and Rs.2,500/- per month as maintenance from the date of filing of the petition to the petitioner/wife.

6. Aggrieved over the judgment of the learned Sessions Judge, the petitioner/husband has filed this revision case.

7. Heard Mr.B.Rajesh Saravanan, learned counsel for the petitioner and T.Antony Arul Raj, learned counsel for the respondent.

8. The learned Counsel appearing for the revision petitioner has submitted that after the marriage of the petitioner and respondent on 14.06.2006, the respondent insisted for a nuclear family. But, the petitioner did not agree for the demand of the wife, therefore, she has voluntarily deserted the petitioner and started living with her parents, even without informing her husband, the petitioner. Later on all her sridhana articles were returned to her on 23.07.2008 before the All Women Police Station, Kulithalai, where the wife stated that she was unwilling to reunite with the petitioner.

9. The trial court has rightly appreciated the evidence and dismissed the plea of the respondent. But the appellate Court did not appreciate the evidence in a proper perspective that at any point of time the petitioner was not subjected to domestic violence either by her husband or by her in-laws. The appellate Court failed to consider the fact the petition was filed after a very long of time seven years and also failed to consider the petition filed by this petitioner in H.M.O.P.No.53 of 2013 for restitution of



conjugal rights, before the Sub Court, Kulithalai. Therefore, the judgment of the appellate Court ordering maintenance and compensation is not sustainable in the eye of law and prayed for allowing this revision case by setting aside the judgment of the appellate Court.

WEB COPY

10.This Court paid its anxious consideration to the rival submissions made on either side and perused the materials placed on record.

11.In this case, the marriage between the petitioner and the respondent was admitted by both of them. The appellate Court has appreciated the evidence that the evidence of the respondent PW1 is corroborated by the evidence of her aunt [PW2] and her uncle [PW3] of PW1 and held that the petitioner was subjected to domestic violence. The appellate Court very clearly explained that after nine months of the birth of their child on 31.03.2007, the petitioner and the respondent lived for some time. Thereafter only they started living separately and subsequent to the complaint lodged before the All Women Police Station on 23.08.2008 by the respondent, some compromise talk also took place and the petition was filed before the trial Court on 11.05.2012. All these facts are admitted by the petitioner. Therefore, the trial Court has erred in holding that the petition was filed after seven years.

12.The appellate Court also held that even assumed that the respondent had deserted the petitioner on her own volition, it is the duty of the husband to maintain his wife and his child by referring the decision of the Hon'ble Supreme Court in **Mannava Satyawati and Others Vs Mannava Malleswara Rao**, reported in **1995 (3) SCC 259**, wherein it was held that the High Court fell into patent error in reaching the finding that since the wife and the children left the house on their own, they were not entitled to the maintenance and the husband was bound to maintain his wife and children. Thus the appellate court ordered for maintenance and compensation by partly allowing the appeal filed by the respondent.

13.The scope of Criminal Revision under Section 397 r/w 401 CrPC is very limited and this Court cannot re-appreciate the evidence, unless and until there is a illegality, perversity or impropriety in the findings of the trial Court and the appellate Court.

14.This Court in **Anbarasu Vs Mukanchand Bothra**, reported in **2019 (3) MWN (Cr) DCC 1 (Mad)** held that while exercising the revisional powers under Section 397 r/w 401 CrPC, the Court is required to find out if there is any illegality or impropriety in the findings of the trial Court and the appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum.



15.The grounds raised by the petitioners do not lead to any illegality, perversity or impropriety in the findings of the appellate Court.

16.In view of the foregoing discussions, this Court is not inclined to interfere with the impugned judgment dated 13.04.2016 passed in C.A.No.14 of 2016 by the learned Sessions Judge, Fast Track Mahila Court, Karur and the same is confirmed and accordingly, this Criminal Revision Case stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

dsk

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Sessions Judge,
Fast Track Mahila Court,
Karur.

2.The Judicial Magistrate No.I,
Kulithalai.

Copy to

1.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

2.The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Cr1.R.C(MD)No.708 of 2016

31.07.2020

VB (06.08.2020) 4P 6C