



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11.02.2020

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.RC(MD)No.889 of 2019

and

Crl.MP(MD)No.10667 of 2019

WEB COPY

I.Akbar Badhsha : Petitioner/1st Respondent
Vs.

1.Perojon
2.Minor Fasis Fathima
through her mother natural guardian
Perojon : Respondents/Petitioners

Prayer: Criminal Revision filed under section 397 r/w 401 of the Code of the Criminal Procedure against the order passed in Cr.M.P No.6691 of 2018 in D.V.O.P No.43 of 2018 on the file of the Judicial Magistrate, Karaikudi, dated 06.08.2019.

For Petitioner : Mr.T.A.Ebenezer
For Respondents : Mr.D.Venkatesh

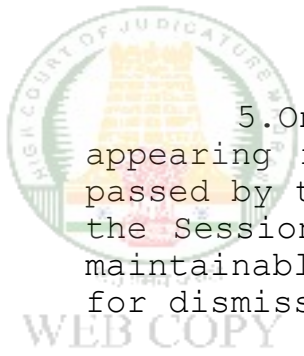
O R D E R

This criminal revision is directed against the order passed in Cr.M.P No.6691 of 2018 in D.V.O.P No.43 of 2018 on the file of the Judicial Magistrate, Karaikudi, dated 06.08.2019.

2.The 1st respondent is the wife of the petitioner. Due to matrimonial tiff, the 1st respondent filed a petition under Domestic Violence Act in DVOP No.43 of 2018 on the file of the Judicial Magistrate, Karaikudi. The learned Magistrate has passed an ex-parte order by granting Rs.4,000/- as monthly maintenance. Subsequently, after the appearance of the petitioner/husband, the respondents filed Cr.M.P No.6691 of 2018 in DVOP No.43 of 2018 for interim maintenance. The learned Magistrate, by order, dated 06.08.2019 granted interim maintenance of Rs.8,000/- per month to the 1st respondent. Aggrieved by the said order, this criminal revision is preferred by the petitioner.

3.Heard both sides and perused the materials available on record.

4.It is mainly argued on the side of the petitioner/husband that the petitioner is always ready to live with the 1st respondent, however, the 1st respondent is in adamant not to live with the petitioner and the order of interim maintenance of Rs.8,000/- per month is too high and that has to be reduced to some extent and prays that the impugned order passed by the trial court has to be set aside.



5. On the other hand, it is argued by the learned counsel appearing for the respondents that only against the impugned order passed by the trial court, only an appeal has to be preferred before the Sessions Judge and the revision filed by the petitioner is not maintainable under section 29 of the Domestic Violence Act and prays for dismissal of the criminal revision.

6. Under Section 20 of the Act, the concerned Jurisdiction Magistrate, while disposing of an application under Sub-section (1) of Section (12) of the Act, can direct the party to pay monetary relief to meet the expenses incurred and the losses suffered by the aggrieved person and the child of the aggrieved person.

7. Under Section 23 of the Act, the Magistrate would also have the power to pass interim orders on satisfaction of a prima facie case, which discloses that the respondent is committing, or has committed an act of domestic violence or there is a likelihood that the respondent may commit an act of domestic violence. Sub Section 2 of the Section (23) of the Act further states that the Magistrate can even grant an ex-parte order under that Section on the basis of the affidavit in such form as may be prescribed, of the aggrieved person under Sections 18, 19, 20, 21 and 22 of the Act.

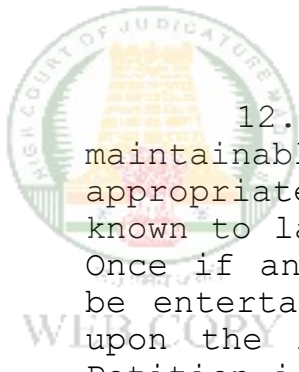
8. In the case on hand, since the learned Magistrate by invoking the power under section 23 of the Act has passed the impugned order, by which a direction was issued to the petitioner herein to pay a sum of Rs.8,000/- per month to the 1st respondent.

9. Section 29 of the Act reads thus:-

9. Appeal-There shall lie an appeal to the Court of Session within 30 days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.

10. Whatever order passed by the learned Magistrate under various provisions of the Domestic Violence Act, can be appealed by the Court of Sessions within a period of 30 days. There is a clear statutory appealable remedy as provided under the Act itself. As rightly pointed out by the learned counsel appearing for the respondents, the petitioner cannot invoke the revisional jurisdiction of this Court.

11. Keeping in view of the above facts, this court is of the considered opinion that the present Criminal Revision filed by the revision petitioner/husband is not maintainable in limini, when he has an alternative viable and efficacious remedy of filing of an Appeal as per Section 29 of the Act.



12.In the result, this Criminal Revision is dismissed as not maintainable. However, the petitioner is at liberty to approach the appropriate Appellate Court, if he is so advised, in the manner known to law and in accordance with law, to seek appropriate remedy. Once if any such appeal is filed by the petitioner, the same shall be entertained by the Court of Appeal concerned, without insisting upon the limitation period. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

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To,

The Judicial Magistrate,
Karaikudi.

+1 CC to M/s.T.A.EBENEZER, Advocate (SR-5633[F] dated 11/02/2020)

+1 CC to M/s.D.VENKATESH, Advocate (SR-6199[F] dated 13/02/2020)

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SPU (10.09.2020) 3P 4C