



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.09.2021
CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.No.356 of 2021
&
Crl.M.P.No.6057 of 2021

S.Nandhini @ Sadhana
D/o, Subramaniam

... Petitioner

Versus

A.Babu
S/o, Amirthalingam
Represented by its power of Attorney
V.Srinivasan

... Respondent

PRAYER:

Criminal Revision Petition filed under Section 397 read with 401 of the Code of Criminal Procedure, to set-aside the order passed by the Hon'ble Principal District and Sessions Court, Chennai in Crl.M.P.No.651 of 2021 in Crl.Appeal No.68 of 2021 on 08.04.2021 is filed by the power of attorney holder of the respondent/appellant husband and it may be dismissed.

For Petitioner : Mr.S.Natarajan
For Respondent : M/s.M.R.Thangavel

ORDER

This Criminal Revision Petition has been filed to set-aside the order dated 08.04.2021 in Crl.M.P.No.651 of 2021 in Crl.Appeal No.68 of 2021 on the file of the Principal District and Sessions Court, Chennai.

2. Petitioner is the wife. Respondent is the husband.

3. The petitioner filed the complaint under D.V.Act. before the learned Metropolitan Magistrate, Additional Mahila Court, Egmore, Chennai, through Protection Officer. Though notice served on the respondent, he did not appear before the Mahila Court, hence, the Metropolitan Magistrate passed exparte order, directing the respondent to pay sum of Rs.50,000/- per month to the petitioner towards maintenance. Challenging the said order, the respondent herein filed the appeal before the Principal Sessions Judge, Chennai in Crl.A.No.68 of 2021. Since there is a delay of 778 days in filing the appeal, he filed the petition in Crl.M.P.No.651 of 2021 to condone the delay. The learned Principal District and Sessions Judge, considered the fact and condoned the delay and



taken the appeal on file in Crl.A.No.68 of 2021. Wife has challenged the order passed by the Principal District and Sessions Judge in Crl.M.P.No.651 of 2021.

4. Learned counsel for the petitioner/wife would submit that there is a delay of 778 days in filing the appeal and the delay has not been properly explained by the respondent and the learned Sessions Judge/appellate Court failed to consider the same and simply condoned the delay, which warrants interference of this Court.

5. The learned counsel for the respondent/husband would submit exparte order dated 02.11.2018 has been passed on the complaint in D.V.No.65 of 2018 by the Metropolitan Magistrate, Egmore, Chennai. Since the respondent residing in abroad and he is not aware of the fact, subsequently, after coming to know, he filed the petition in Crl.M.P.No.107 of 2020 before the Metropolitan Magistrate, to set aside the exparte order. The said petition was contested by the petitioner/wife herein for two years. After two years, the learned Metropolitan Magistrate dismissed the petition on 17.12.2020. Since the petition to setaside the exparte order was dismissed that the petition is not maintainable, the respondent/husband filed the Criminal Appeal before the Principal District and Sessions Judge with the delay of 778 days. Already the petitioner filed the maintenance petition, and she got maintenance of Rs.50,000/- and she suppressed the same and in order to give torture to the respondent/husband, filed the petition one after another, invoking one Act after another Act. Since the order passed by the Magistrate is exparte order, already he is also paying sum of Rs.50,000/- as maintenance in other proceedings, he filed the petition in Crl.M.P.No.651 of 2021 to condone the delay in filing the appeal before the Principal District and Sessions Court, Chennai and the appellate court rightly considered the same and condoned the delay. Since the delay is only due to proceed the exparte order and to setaside the petition. Therefore, there is no merit in the revision and the revision is liable to be setaside. Further, the petitioner has suppressed all the earlier proceedings and obtain maintenance in other proceedings also and the petitioner has not come to the Court with clean hands. The petitioner is not interested to live with the respondent and only she interested to get the money from the respondent/husband. The appellate court rightly condoned the delay and there is no merit in the revision and the same is liable to be dismissed.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the records.

7. Admittedly, the petitioner is the wife and the respondent is the husband. Matrimonial and other proceedings were pending between the parties. However, the petitioner filed the Complaint before the protection officer, the



protection officer, after completing the enquiry, filed the complaint before the Metropolitan Magistrate, Additional Mahila Court, Egmore, Chennai and the same was taken on file in D.V.No.65 of 2018. In the said proceedings, notice served on the respondent/husband and since he did not appear, the Metropolitan Magistrate passed the exparte order on 02.11.2018. Subsequently, he filed the petition to set aside the exparte order in Crl.M.P.No.107 of 2020 and the same was dismissed on 17.12.2020. Thereafter, he filed the appeal before the Principal Sessions Court, Chennai. The main contention raised by the petitioner is that the reasons stated in the petition to condonation of delay is not legally sustainable and the learned Sessions Judge, condoned the delay without any proper reasons. The contention of the respondent/husband is that since the order is an exparte order, he filed the petition to set aside the exparte order in Crl.M.P.No.107 of 2020 and since that petition was pending for two years, he filed the appeal after disposal of the petition. It is a well settled proposition of law, in criminal case, there is no provision in Cr.P.C to set aside the exparte order. Even in the D.V Act also there is no provision to file the petition to set aside the exparte order and again the provision is very clear, if any order passed by the Magistrate under D.V.Act, the aggrieved party can file the appeal. Under these circumstances, the petition to set aside the exparte order is not maintainable. He cannot take advantage of pending the petition to set aside the ex-parte order and file the appeal only after two years, especially when the case is for maintenance.

8. Therefore, under these circumstances, this Court finds that the reasons stated in the petition to condone the delay and also the reasons stated by the Sessions Judge is not sustainable. It is a well settled proposition of law that condonation of delay is merely discretionary power of the court. However, the discretion should be exercised judicially and not arbitrarily. Therefore, this Court find that since in the petition under D.V.Act, notice also served on the respondent/husband, on the date of appearance, he did not appear, and considering the materials, the Magistrate passed the exparte order. Subsequently, the respondent has not filed any appeal, challenging the said exparte order. Instead of filing appeal, he filed the petition, to set aside the exparte order before the Magistrate, which is against law. Therefore, that reason cannot be taken for condoning the delay. Therefore, under these circumstances, this Court finds that the order of the learned Sessions Judge is perverse and the same is liable to be set aside, accordingly, the impugned order passed by the Sessions Judge is set aside, ie., the order dated 08.04.2021 in Crl.M.P.No.651 of 2021 in Crl.Appeal No.68 of 2021 on the file of the Principal District and Sessions Court, Chennai is set aside and the



appeal is ordered to be rejected. Accordingly, the Criminal Revision Case is allowed. Consequently, connected miscellaneous petition is also closed.

WEB COPY

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mfa

To

The Principal District and Sessions Judge,
Principal District and Sessions Court,
Chennai.

2.The Metropolitan Magistrate,
Additional Mahila Court,Chennai.

+1 cc to Mr.C.Anbu, Advocate Sr.NO. 51329

+2 ccs to Mr.S.Natarajan, Advocate Sr.NO. 51032

CRL.R.C.No.356 of 2021

&

CrI.M.P.No.6057 of 2021

PA (CO)

A.SK(09/03/2022)