

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.02.2021

CORAM

THE HONOURABLE MR. JUSTICE A. D. JAGADISH CHANDIRA

Crl.R.C.No.813 of 2014
and
Crl.R.C.No.1589 of 2017

1.G.Jayaraman S/o.S.Govindasamy
2.S.Govindasamy S/o.Sri Rama Gounder
3.G.Rajamani W/o.S.Govindasamy
... Petitioners in Crl.R.C.No.813 of 2014

G.Jayaraman S/o.S.Govindasamy
... Petitioners in Crl.R.C.No.1589 of 2017

Vs.
S.SelviD/o. R.Sundaram
... Respondent in both petitions

Prayer in Crl.R.C.No.813 of 2014: Criminal Original Petition filed under Section 401 Cr.P.C. to set aside the Judgement dated 10.06.2014 in Crl.A.No.21 of 2011 on the file of the Principal District and Sessions Judge, Dharmapuri confirming the order dated 10.08.2011 in M.C.No.10 of 2010 on the file of the Judicial Magistrate No.I, at Dharmapuri.

Prayer in Crl.R.C.No.1589 of 2017: Criminal Original Petition filed under Section 401 Cr.P.C. to set aside the order dated 28.11.2017 in Crl.M.P.No.1370 of 2016 on the file of the Judicial Magistrate No.1, Dharmapuri.

For Petitioner/s
in both the petitions : Mr.Selvakumar
For Respondent
in both the petitions : Mr.V.Raja Mohan

ORDER

(This case has been heard through video conference)

The Revision Petition in Crl.R.C.No.813 of 2014 has been filed to set aside the Judgement dated 10.06.2014 in Crl.A.No.21 of 2011 on the file of the Principal District and Sessions Judge, Dharmapuri confirming the order dated

10.08.2011 in M.C.No.10 of 2010 on the file of the Judicial Magistrate No.I, at Dharmapuri.

2. The Revision Petition in CrI.R.C.No.1589 of 2017 has been filed to set aside the order dated 28.11.2017 in CrI.M.P.No.1370 of 2016 on the file of the Judicial Magistrate No.1, Dharmapuri.

Facts relating to CrI.R.C.No.813 of 2014:

3. In CrI.R.C.No.813 of 2014, the revision petitioners are the husband, father-in-law and mother-in-law of the respondent/wife. The respondent / wife had filed a complaint before the Protection Officer on 24.08.2010 under the Domestic Violence Act alleging that the marriage between her and the first petitioner was performed on 31.01.2005 in Bhoopathi Thirumana Mandabam, Dharmapuri. Out of the wedlock, a female child was born to them after one year. The further allegation is that they were living happily for six months and after six months, the 3rd petitioner/mother-in-law assaulted her and had driven her out of the matrimonial home and the second petitioner/father-in-law had also committed cruelty on her. The respondent wife was working at Pachamuthu Matriculation School as a Mid wife for performing first-aid and that she had given Rs.3 lakhs from her P.F. Account to the first petitioner/husband. The further allegation is that the 3rd petitioner /mother-in-law had asked her to get Rs.10 lakhs and share in the property from her parents. When the respondent wife asked the first petitioner/husband to return back her jewels, the first petitioner/husband and his parents/2nd and 3rd petitioners had driven her out from the matrimonial house and also abused her in filthy words. Thereafter, when the mother and the maternal uncle of the respondent/wife and other relatives had come in order to make compromise, the first petitioner / husband and his parents, attempted to assault the mother of the respondent/wife. On 01.02.2010 the respondent/wife along with her father and relatives went to the petitioners' house wherein the petitioners abused the father of the respondent/wife in filthy words and driven them out of the house. The further allegation is that the respondent/wife along with her child was living with her parents and that they were not maintained by her first petitioner/husband and thereby, they were suffering a lot. The first petitioner/husband was doing Real Estate and Finance business and he was also doing wholesale and retail Medicine business and he had let out five houses for rent and he was getting Rs.2 lakhs as monthly income. The Protection Officer after conducting enquiry referred the complaint to the learned Judicial Magistrate-I, Dharmapuri and the complaint was taken up in M.C.No.10 of 2010.

4. The petitioner/husband had filed a counter before the trial Court denying the allegations. He had stated that on the compulsion of the respondent/wife, he had taken a rented

house in Teachers Colony, Dharmapuri Town in order to live with his wife and child and during that time, his wife abused him in filthy language and scolded him with indecent words stating that she would not live with him. She also behaved in an irresponsible manner which caused him mental cruelty. During 2008, he had set up a separate living in a house belonging to him and the respondent/wife was in the house for 15 days and thereafter, she left the matrimonial home on 27.01.2008 along with the child after having quarrelled with him and that she did not return back even after two years as she was not willing to live with him. On 01.02.2010, the respondent/wife along with her father came to the petitioners' house and abused them in filthy words. She also threatened stating that she would lodge a false complaint in All Women Police Station. Accordingly, the very next day, she had lodged a false complaint in All Women Police Station, Dharmapuri. Further, since the respondent wife had refused to come and live with the first petitioner/husband for two years from January 2008, the petitioner/husband had filed a divorce petition on the file of the Sub Court, Dharmapuri.

5.The learned Judicial Magistrate on appearance of the parties and after adopting formalities, conducted enquiry. On the side of the respondent/wife, three witnesses were examined as PW1 to PW3 and Ex.P1 to P5 were marked. On the side of the petitioners, one witness was examined as R.W.1 and Ex.R1 to Ex.R3 were marked. The learned Judicial Magistrate-I, Dharmapuri, after enquiry, finding that the averments made by the respondent / wife were true, allowed the petition in M.C.No.10 of 2010 by order dated 10.08.2011 and passed residential order and directed the petitioner husband to pay Rs.15,000/- to the respondent/wife before 7th of every month. Against the order of the learned Judicial Magistrate, the petitioner/husband had preferred a Crl.A.No.21 of 2011 on the file of the Principal District and Sessions Judge, Dharmapuri and the same came to be dismissed on 10.06.2014 confirming the order dated 10.08.2011 in M.C.No.10 of 2010 on the file of the Judicial Magistrate No.I, at Dharmapuri. Against which, the present revision in Crl.R.C.No.813 of 2014 has been filed.

Facts relating to Crl.R.C.No.1589 of 2017:

6.After the orders in M.C.No.10 of 2010 by the learned Judicial Magistrate, Dharmapuri and since the husband did not pay any amount to the respondent / wife, she had filed Crl.M.P.No.1370 of 2016 u/s.28 of Domestic Violent Act. In the petition, the wife had stated that the husband had not complied with the orders and had not paid Rs.4,000/- each to the wife and her minor daughter and had not paid Rs.2,000/- towards the school fees of the daughter and Rs.5,000/- towards additional expenditure.

7.The petitioner / husband had filed counter stating the wife is living in one of the houses belonging to the petitioner / husband and that he was taking care of the

educational expenses of the child and thereby he was not entitled to pay Rs.5,000/- towards additional expenditure and Rs.2,000/- towards school fees of the daughter. Further, he had stated that the wife suppressed about the pendency of Crl.R.C.No.813 of 2014 before this Court and the stay granted by this court and thereby he had not complied with the order. He had also contended that when there is stay, he need not comply with the order and that there was no breach of the Protection order and thereby he cannot be penalised for not having complied with the order.

8.The learned Trial Judge after hearing both sides had modified the order passed in M.C.No.10 of 2010 vide order dated 28.11.2017 had directed the husband to pay Rs.4,000/- each to the wife and the minor daughter, totalling to Rs.8,000/- commencing from 10.08.2011. Against the order passed in Crl.M.P.No.1370 of 2016 dated 28.11.2017, the husband had filed Crl.R.C.No.1589 of 2017.

9.Both the Criminal Revision Cases are taken up together for hearing on the consent of both counsels.

10.The learned Counsel appearing for the petitioners in Crl.R.C.No.813 of 2014 and Crl.R.C.No.1589 of 2017 would submit that even as per the petition the wife was living separately for two years in her parental home and there was no domestic relationship, only on 01.02.2010, she had come to the house of the petitioner/husband and created problem and thereafter, had given a false complaint against the petitioner. He would submit that as per Section 468 Cr.P.C., the complaint under Domestic Violence Act should have been filed within a period of one year from the date of alleged domestic incident. Whereas, as per the complaint, the respondent/wife was living separately with her child in her parents house for 2 years and thereby there was no continuity of relationship and therefore the complaint filed by the wife beyond the period of one year is barred by limitation. He would further submit that the trial Court erred in taking up the complaint which is barred by limitation. In support of his contention he would rely on the decision reported in Inderjit Singh Grewal Vs. State of Punjab reported in 2011 (12) SCC 588 wherein the Hon'ble Apex Court at para 32 & 33 has held under:

"32.Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 CrPC, that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Sections 28 and 32 of the 2005 Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006 which make the provisions of

CrPC applicable and stand fortified by the judgments of this Court in *Japani Sahoo v. Chandra Sekhar Mohanty* [(2007) 7 SCC 394 : (2007) 3 SCC (Cri) 388 : AIR 2007 SC 2762] and *NOIDA Entrepreneurs Assn.v.NOIDA* [(2011) 6 SCC 508 : (2011) 2 SCC (Cri) 1015] .

33. In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions of the 2005 Act is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the court. Undoubtedly, for quashing a complaint, the court has to take its contents on its face value and in case the same discloses an offence, the court generally does not interfere with the same. However, in the backdrop of the factual matrix of this case, permitting the court to proceed with the complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same."

He would further submit that the petitioner had filed an appeal in *Crl.A.No.21* of 2011 challenging the order passed in *M.C.No.10* of 2010 and subsequently he had also filed *Crl.R.C.No.813* of 2014 and thereby there was no wilful disobedience of the order passed by the learned Magistrate by the petitioner herein. The petitioner is taking care of the educational expenses of his daughter and that the wife and the daughter were also residing in the house belonging to the petitioner and thereby there was no need for the husband to pay any amount to the wife and to his daughter. The amount of maintenance awarded was also excessive.

11. Per contra Mr. Rajmohan, the learned Counsel for the respondent/wife would submit that there was no delay on the part of the responded/wife in filing the complaint. The marriage between the petitioner and the respondent/wife was performed on 31.01.2005 and that a female child was born to them on 27.05.2006 and thereafter the respondent/wife was subjected to cruelty and she was driven out of the matrimonial home. The facts relating to the marriage and the birth of the child and that she being driven out of the matrimonial home are not disputed and both the Courts held that the marriage was in subsistence and that when she had come to the house of the petitioners' on 01.02.2010 along with her father, she was subjected to cruelty pursuant to which, a complaint was preferred to the Protection Officer on 24.08.2010 and thereafter on the reference from the Protection Officer, the petition was taken by the learned Judicial Magistrate on

01.11.2010 in respect of the incident on 01.02.2010. The wife had also given a complaint to the police and only after the complaint, the petitioner/husband had filed the divorce application on 16.02.2010. He would submit that there was a continued cruelty and the courts below having found that the money of the respondent/wife was retained by the petitioner/husband and that no maintenance was paid to her, found that the complaint was filed on time and not barred by limitation, had passed residential order and directed the petitioner husband to pay Rs.4,000/- each to the wife and to the minor daughter and Rs.2,000/- towards school fees and Rs.5,000/- towards additional expenditure in total Rs.15,000/- vide order dated 10.08.2011 in M.C.No.10 of 2010 and he was also directed to pay the said amount to the respondent / wife before 7th day of every English calendar month. He would further submit that though the wife was living at her father's house, the offence of matrimonial cruelty was a continuing one and that finding that the wife and her father and relatives were abused by the husband on 01.02.2010 and that the cruelty in respect of withholding the finance were continuing and when the Court had taken cognizance of the same and that the Appellate court had also upheld that the complaint is filed within the period of limitation, there is no error or infirmity in the orders passed by the Courts below and thereby the Crl.R.C.No.813 of 2014 has to be dismissed. However, he would submit that the wife had not challenged the order of modification passed by the Court in Crl.M.P.No.1370 of 2016 dated 28.11.2017 and he would submit that the husband is taking care of the educational expenses of the child.

12. The learned counsel for the respondent/wife would submit that though originally the learned Magistrate had passed an order directing the husband to pay Rs.15,000/- per month in total, subsequently it was modified by the learned Magistrate in Crl.M.P.No.1370 of 2016 dated 28.11.2017. However, the respondent/wife has not challenged the order of modification. He would submit that even after modification till date the petitioner/husband has not paid single rupee to the respondent/wife. He would submit that cruelty is a continuing offence. The wife was driven out from the matrimonial house and the marriage was in subsistence, the money of the respondent/wife which were handed over to her husband and in laws were in their custody and they had not returned the amount, both the Courts below have found that the amounts were not returned to the respondent/wife and thereby the Domestic Violence was continuing had found that the petition has been filed within time. In support of his contention, he would rely on the judgement of the Hon'ble Apex Court in Rupali Devi Vs State of Uttar Pradesh reported in 2019 5SCC 384 (para 14 & 15).

"14."Cruelty" which is the crux of the offence under Section 498-A IPC is defined in Black's Law Dictionary to mean "the intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (abuse, inhuman treatment, indignity)". Cruelty can be both physical or mental cruelty. The impact on the mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being ill-treated are aspects that cannot be ignored while understanding the meaning of the expression "cruelty" appearing in Section 498-A of the Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatise the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress caused by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place.

15.The Protection of Women from Domestic Violence Act, as the object behind its enactment would indicate, is to provide a civil remedy to victims of domestic violence as against the remedy in criminal law which is what is provided under Section 498-A of the Penal Code. The definition of "domestic violence" in the Protection of Women from Domestic Violence Act, 2005 contemplates harm or injuries that endanger the health, safety, life, limb or well-being, whether mental or physical, as well as emotional abuse. The said definition would certainly, for reasons stated above, have a close connection with Explanations (a) & (b) to Section 498-A of the Penal Code which define "cruelty". The provisions contained in Section 498-A of the

Penal Code, undoubtedly, encompass both mental as well as the physical well-being of the wife. Even the silence of the wife may have an underlying element of an emotional distress and mental agony. Her sufferings at the parental home though may be directly attributable to commission of acts of cruelty by the husband at the matrimonial home would, undoubtedly, be the consequences of the acts committed at the matrimonial home. Such consequences, by itself, would amount to distinct offences committed at the parental home where she has taken shelter. The adverse effects on the mental health in the parental home though on account of the acts committed in the matrimonial home would, in our considered view, amount to commission of cruelty within the meaning of Section 498-A at the parental home. The consequences of the cruelty committed at the matrimonial home results in repeated offences being committed at the parental home. This is the kind of offences contemplated under Section 179 CrPC which would squarely be applicable to the present case as an answer to the question raised.

He would submit that though the wife was stated to have been living along with her parents, she was subjected to continuous harassment and that the monies taken from her were not returned to her, thereby putting her to financial difficulty. Further, the wife and her father and relatives had gone to the house of the petitioner on 01.02.2010 where they have been subjected to cruelty by the husband and his parents, thereby, the respondent / wife within the period of limitation the wife preferred the complaint to the Protection Officer on 24.08.2010 and after enquiry it had been forwarded to the learned Magistrate and taken on file on 01.10.2012 which was also within the period of limitation and thereby there is no error in the order passed by the learned Trial Judge which was later confirmed by the Appellate Court.

13. Heard both the counsels and perused the materials on record.

14. The marriage between the parties had taken place on 31.01.2005 and out of wedlock a female child was born to them. It is a case of the wife that they were living happily for six months and after six months the mother-in-law had assaulted her and driven her out of the matrimonial home and the father-in-law also committed cruelty on her. They had taken Rs.3 Lakhs from her Provident Fund Account and later had demanded Rs.10 Lakhs and also a share in the property of her parents.

They had also kept her jewels and refused to give it to her and had driven her out of the matrimonial home. When an attempt was made by the relatives of the wife to compromise the husband and his parents, they have abused the wife and her relatives. Further, on 01.02.2010 when the wife, her father and relatives had gone to the house of the husband, they were abused and driven out from the place. The wife and her child were living with their parents and that the husband did not maintain his wife or child. The husband was doing real estate and finance business and he was also doing whole sale and retail medicine business and was earning Rs.2 lakhs as monthly income. Despite taking Rs.3 Lakhs cash from her and jewels from her, the wife was driven out of the matrimonial home and not even single rupee was paid to her towards maintenance. The Trial Court finding that the marriage was in subsistence and that the cruelty committed on her was continuous one, had rightly taken up the complaint and passed the order and the Appellate Court has also confirmed the same. Finding that the matrimonial cruelty was a continuing one and that the last incident was on 01.02.2010, both Courts have held that the petition was filed well within the time and passed the orders. This Court does not find any illegality or infirmity in the order passed by the Courts below and thereby the Crl.R.C.No.813 of 2014 deserves to be dismissed.

15.In so far as the Crl.R.C.No.1589 of 2017 is concerned, the Trial Court taking into consideration that the wife and child are living in one of the houses of the petitioner / husband and that educational expenses of the child was taken care of her father had modified the order and directed the petitioner / husband to pay Rs.4,000/- each to the wife and to the child as monthly maintenance. The respondent / wife had not challenged the said modification order dated 28.11.2017. This Court does find any infirmity in the modification order. There is no need for further modification. It is also submitted that the petitioner / husband has not paid one single rupee also to his wife and to his daughter till date. Hence Crl.R.C.No.1589 of 2017 also deserves to be dismissed.

16.In the result, these Criminal Revision Cases stand dismissed. In the event of respondent / wife filing any execution petition, the trial Court shall hear the same and pass orders as expeditiously as possible preferably within a period of eight weeks.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Principal District and Sessions Judge,
Dharmapuri.
2. The Judicial Magistrate No.I,
Dharmapuri.

Copy to: The Section Officer,
Criminal Section(Records),
High Court, Madras.

+2cc to Mr.R.Selvakumar, Advocate, S.R.No.5333.
+1cc to Mr.N.Mohideen Basha, for Mr.Rajamohan, Advocate,
S.R.No.5476.

Cr1.R.C.No.813 of 2014
and
Cr1.R.C.No.1589 of 2017

GP (CO)
CSR 31.03.2021



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