



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.02.2021

Pronounced on : 11.02.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.RC(MD).No. 100 of 2017

Abirami : Petitioner / Respondent

Vs.

1.Manimaran

2.Balasubramani

3.Guruvammal

: Respondents / Appellants

PRAYER:- Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the order passed in Criminal Appeal No.27 of 2015, dated 17.03.2016 passed by the Additional District and Sessions Judge, Virudhunagar.

For petitioner : Mr.R. Thangapandian

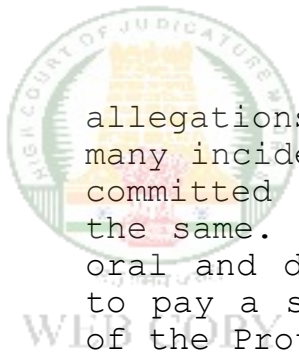
For respondents : Mr. G. Marimuthu

ORDER

This Criminal Revision Case is directed against the Judgment passed in Criminal Appeal No.27 of 2015, dated 17.03.2016 on the file of the file of the Additional District and Sessions Judge, Virudhunagar, reversing the orders passed by the Court of the Judicial Magistrate, Aruppukkottai in M.C.No.39 of 2013, dated 10.07.2015 granting the reliefs under Sections 20 and 22 of the Protection of Women from Domestic Violence Act, 2005.

2. The petitioner wife, had invoked the provisions of the Protection of Women from Domestic Violence Act, 2005. It is not in dispute that the first respondent is the husband; the second respondent is the father-in-law and the third respondent is the mother-in-law of the petitioner. It is also not in dispute that marriage between the petitioner and the first respondent was solemnized on 12.11.2010 that the petitioner's family had given 5 sovereigns of jewels, a cash of Rs.10,000/- and household articles at the time of marriage and that subsequently, misunderstanding arose between the parties and they are living separately. It is also not in dispute that the first respondent has filed a petition in HMOP.No. 98 of 2013 seeking divorce against the petitioner on the file of the Sub Court, Aruppukkottai and subsequently he had withdrawn the said case and that the petitioner, alleging domestic violence, has initiated the proceedings claiming the reliefs under Sections 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005, now under consideration.

3. It is evident from the records that the petitioner as well as the first respondent are blaming each other by raising



allegations and counter-allegations. The petitioner has narrated many incidents and events with which domestic violence was allegedly committed against her. The respondents have specifically disputed the same. The learned Magistrate upon considering the evidence both oral and documentary has passed an order directing the respondents to pay a sum of Rs.50,000/- towards compensation under Section 22 of the Protection of Women from Domestic Violence Act, 2005 and also to pay Rs.2,500/- per month as maintenance from the date of petition under Section 20 of the said Act and further directed the respondents to pay the arrears within a period of three months. Aggrieved by the said order, the respondents herein have preferred the appeal in Criminal Appeal No.27 of 2015 on the file of the Additional District and Sessions Court, Virudhunagar and the Appellate Court after reappreciating the evidence has come to the conclusion that the alleged commission of domestic Violence against the petitioner was not proved and thereby allowed the appeal setting aside the order passed in M.C.No.39 of 2013 by the learned Judicial Magistrate, Aruppukkottai and consequently, dismissed the petitioner's case. Not satisfied with the Judgment of the Appellate Court, the petitioner / wife has come forward with the present revision.

4. Whether the Judgment of the Appellate Court in dismissing the case filed under Protection of Women from Domestic Violence Act, 2005 is liable to be set aside? is the point for consideration.

5. As already pointed out, the petitioner has raised several allegations and charges against the husband and in-laws. The respondents on their part have levelled some charges against the petitioner. The Trial Court after considering the entire evidence, has given findings that many of the incidents and events with which the domestic violence was allegedly committed were not proved, that though some events stood proved, the same would not amount to domestic violence and that for some of the allegations both the parties have not come out with the actual and real facts and as such, the Court was not in a position to decide about the same. The trial Court has specifically held that the petitioner was not informed about the epilepsy disease suffered by the first respondent before their marriage and the same would amount to domestic violence and that the property belonging to the family of the respondents was disposed without the consent and knowledge of the petitioner and the same would also amount to domestic violence. By holding so, the learned Magistrate has granted the reliefs above mentioned. But the Appellate Court after considering the evidence adduced, has given a finding that non disclosure of the disease of epilepsy to the petitioner before the marriage would not amount to domestic Violence and that disposal of the property behind the back of the petitioner would also not amount to economic abuse as contemplated under Section 3 Expln. I (iv) of the said Act. By deciding so, the Additional District Judge allowed the appeal and thereby



setting aside the orders of the trial Court.

6. The learned counsel appearing for the petitioner would contend that the Appellate Court failed to see that the petitioner had established that the first respondent was suffering from epilepsy disease even before the marriage and that the same was suppressed by him, that the Appellate Court has also failed to appreciate that the respondents have disposed of their property behind the back of the petitioner. He would further contend that though the petitioner had been ready to live with the first respondent, he is not ready and refused for reunion, that though the husband is bound to maintain his wife, he refused and neglected to maintain the petitioner and that therefore, the trial Court has correctly held that the respondents had committed domestic Violence against the petitioner and hence, the petitioner is entitled to the reliefs claimed.

7. As rightly observed by the Appellate Court, the petitioner has not challenged the findings of the trial Court that many of the incidents and events alleged by her were not proved and even if the same were shown to be proved, that would not amount to domestic violence.

8. Regarding the non disclosure of the disease of epilepsy, the trial Court has correctly pointed out that the petitioner's father was having knowledge about the disease of the first respondent even before the marriage and that the petitioner alone was not informed. As rightly contended by the learned counsel for the respondents, since the petitioner's father was informed about the disease suffered by the first respondent, there was no need or necessity to inform the petitioner separately. Moreover, as rightly observed by the learned Appellate Judge, the petitioner in her cross examination would say that she is willing to live with her husband and she would deny the specific suggestion that she was refusing to live with the first respondent citing his diseases. Considering the above, it is very much clear that the petitioner has not taken the disease of the first respondent seriously and she was very much ready and willing to live with him despite the disease.

9. Regarding the disposal of the property allegedly behind the back of the petitioner, the trial Court has termed it as an economic abuse as per Section 3 Explanation I - (iv) (b) of the Protection of Women from Domestic Violence Act, 2005, and the said provision is reproduced hereunder for better appreciation:

3. Definition of domestic Violence :

Explanation : For the purpose of this section



(i)...

(ii)...

(iii)...

(iv) "economic abuse" includes:

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(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance.

(b) disposal of household effects, any alienation of assets whether moveable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

10. Admittedly, the petitioner has not furnished the particulars about the property alleged to have been disposed of by the respondents' family. The first respondent in his evidence would admit that his father had sold the house property at Nehru Nagar in the year 2013 and that he does not know the price for which the property was sold. As rightly observed by the Appellate Court, the petitioner has not shown as to how the said disposal would amount to economic abuse. The petitioner has nowhere stated that she has interest in the said property nor that she is entitled to use that property by virtue of the domestic relationship nor the property is reasonably required by her nor that it is her stridhan property nor that the said property is held by her either jointly or separately. Considering the above, the finding of the Appellate Court that the above disposal of the property does not come under the purview of the economic abuse as per explanation (iv) (b) of the Section 3 of the said Act cannot be found fault with.

11. The learned counsel appearing for the petitioner has not canvassed any other ground or reason to impugn the Judgment. Hence this Court decides that there is no infirmity in the Judgment passed by the Appellate Court and this Court concludes that the Criminal Revision Case which is devoid of merits is liable to be



dismissed and the above point is answered accordingly.

12. In the result, the Criminal Revision case is dismissed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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

The Additional District and Sessions Judge, Virudhunagar.

+1 CC to M/s.R.THANGAPANDIAN, Advocate (SR-4421[F] dated 11/02/2021)

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-4737[F] dated 12/02/2021)

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KB(19.02.2021) 5P 4C