



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.02.2021

Pronounced on : 23.02.2021

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C. (MD) .No.283 of 2017

Edward alias Armstrong Edward Paul

... Petitioner

Vs.

1.Joshpin Leena

2.Minor Jeni Ameesa

... Respondents

(2nd respondent Minor is represented by his mother first respondent)

PRAYER: Criminal Revision Petition has been filed under Section 397 and 401 of Cr.P.C, to call for the records in CrI.A.No.37 of 2015 in D.V.C.No.1 of 2010, on the file of the II Additional District and Sessions Judge, Thanjavur, dated 04.03.2016, in confirming the order made in D.V.C.No.1 of 2010 on the file of the Judicial Magistrate, Thiruvaiyaru, dated 26.05.2015 and to set aside the same by allowing this revision.

For Petitioner : Mr.Sakthivel,
for Mr.R.Sundar.

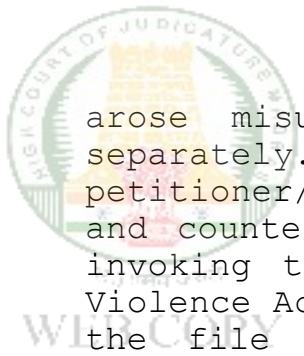
For Respondent : Mr.T.A.Ebenezer

ORDER

The Criminal Revision Case is directed against the judgment passed in CrI.A.No.37 of 2015, dated 04.03.2016, on the file of the II Additional and District Sessions Judge, Thanjavur, confirming the order passed in D.V.C.No.1 of 2010, dated 26.05.2015, on the file of the Court of Judicial Magistrate, Thiruvaiyaru.

2.For the sake of convenience and brevity, the parties will hereinafter be referred as per their ranking/status before the trial Court.

3.It is not in dispute that the marriage between the first petitioner and the respondent was solemnized on 24.06.1999 at St. Anthoniyar Church, Thiruvanaikaval, Trichy, that due to their wed-lock, the second petitioner was born on 05.07.2001, that the respondent is working in Indian Military that subsequently, there



arose misunderstanding between them and that they are living separately. As usual in the matrimonial proceedings, the first petitioner/wife and the respondent/husband are making allegations and counter allegations against each other. The first petitioner, invoking the provisions of the Protection of Women from Domestic Violence Act, has initiated the proceedings in D.V.C.No.1 of 2010 on the file of the learned Judicial Magistrate, Thiruvaiyaru and claimed reliefs under Section 19(8), 21 and 22 of the Protection of Women from Domestic Violence Act. The learned Magistrate, upon considering the evidence, has passed an order on 26.05.2015, granting the reliefs, directing the respondent to pay monthly maintenance at Rs.4,000/- from the date of petition and to pay Rs.5,000/- per year towards the educational expenses of the second petitioner and to handover the jewels and Sridhana articles within three months to the first petitioner before the District Protection Officer and rejected the prayer for damages under Section 22 of the said Act. Aggrieved by the said order, the respondent/husband has preferred an appeal in C.A.No.37 of 2015, before the II Additional District and Sessions Court, Thanjavur and upon perusing the materials available and on hearing the both sides, the learned Additional District Judge, has passed the impugned judgment, dated 04.03.2016, dismissing the appeal and thereby confirming the order of the learned Judicial Magistrate passed in D.V.C.No.1 of 2010, dated 26.05.2015. Not satisfying with the judgment of the Appellate Court, the respondent/husband has come forward with the present revision.

4. Whether the judgment of the Appellate Court passed in C.A.No.37 of 2015, dated 04.03.2016, confirming the order of the trial Court passed in D.V.P.No.1 of 2010, dated 26.05.2015 is liable to be revised? is the point for consideration.

5. The learned counsel for the revision petitioner would contend that the trial Court has not given sufficient opportunity to establish his defence and hastily closed the respondent side evidence in utter violation of the principle of natural justice, that though it was represented before the trial Court that the respondent has to obtain permission from the higher officials as he was working in Army, the trial Court without considering the same hurriedly closed the respondent side evidence and thereby denying opportunity to put forth his defence and that though a prayer for remand was canvassed, the Appellate Court has also not considered the denial of opportunity to the respondent before the trial Court and rejected the prayer.

6. The learned counsel for the revision petitioner would further contend that the first petitioner has been working as a computer teacher in Government Higher Secondary School and she is getting salary to the tune of Rs.20,000/- per month, that though this Court and the Hon'ble Apex Court have often held that wife's income must be taken into consideration, both the Courts have failed to



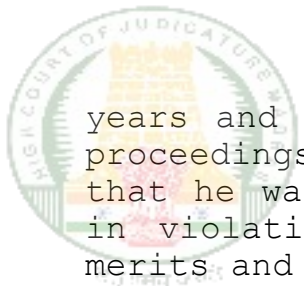
do so and that the trial Court as well as the Appellate Court have failed to note that the respondent has to maintain his old aged mother within his salary of Rs.18,000/- only.

7. Regarding the first contention of the respondent, with respect to denial of opportunity, the trial Court as well as the Appellate Court have dealt with that issue elaborately. It is evident from the records that the petitioners have filed the petition before the Court of the Judicial Magistrate, Thiruvaiyaru on 19.01.2010; the first petitioner was examined in chief on 10.03.2010; P.W.1 was cross examined on 20.01.2014; P.W.2 was examined in chief in July 2014 and was cross examined in September 2014. It is further evident that thereafter, the trial Court has passed the order on 26.05.2015, and the trial Court, in its order, has specifically observed that though so many adjournments sought for by the respondent side were granted, they have not chosen to examine any witnesses, that the respondent himself has not chosen to examine himself and that since the respondent has not utilized the opportunities granted to him, his side evidence was ordered to be closed.

8. It is also not in dispute that the respondent has filed a petition for restitution of conjugal rights and that subsequently filed a divorce petition in I.D.O.P.No. 24 of 2008. It is the specific contention of the respondent that since the decree for restitution of conjugal rights was not complied with by the first petitioner, he was forced to file divorce petition in I.D.O.P.No.24 of 2008, that though the first petitioner has appeared through her counsel and filed counter, she has not participated in the enquiry, that consequently, decree for divorce was granted in favour of the respondent and that since the first petitioner has not taken any steps, the decree of divorce has become final.

9. The Appellate Court taking note of the respondent's contentions with respect to his filing of matrimonial proceedings and getting orders, has rightly commented that the respondent was having opportunity and was able to get permission from his higher authorities to come over here and participate in the matrimonial proceedings, but he was unable to get permission to participate in the proceedings initiated under the Protection of Women from Domestic Violence Act by his wife and daughter.

10. The appellate Court has rightly observed that when the respondent was getting permission for his case, he can very well conduct the DVC case also, but, he has not done so and that the attitude of the respondent would go to reveal that he wanted to prolong the case and by holding so, the learned Appellate Judge has rightly rejected the respondent's prayer for remand. Since the trial Court has afforded sufficient opportunities, the respondent has not chosen to utilize the same. As already pointed out, even for cross



years and the same would go to show his intention to protract the proceedings. Considering the above, the contention of the respondent that he was denied sufficient opportunity to put forth his defence in violation of the principles of natural justice, is devoid of merits and substance and the same is liable to be rejected.

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11. Now coming to the second contention of the respondent i.e., the first petitioner is working as computer teacher in Government Higher Secondary School and she is getting monthly salary at Rs.20,000/-. As already pointed out, the respondent has not adduced any evidence before the trial Court. But it is evident from the judgment of the Appellate Court that the respondent has produced the salary certificate and the Appellate Court has listed out the particulars of credits and debits, and whereunder, the respondent's gross salary is shown at Rs.33,766/- and after deduction, which includes for repayment of loan, is shown at Rs.18,920/-. As already pointed out, the trial Court has only awarded Rs.4,000/- per month to both the petitioners and the Appellate Court has rightly observed that Rs.4,000/- is only 1/8 in his total salary and that itself is very low.

12. Admittedly, the first petitioner is getting Rs.20,000/- per months as consolidated amount. Considering the facts and circumstances of the case, status of the parties and the present economic scenario, awarding of Rs.4,000/- per month and that too for the two petitioners cannot said to be excessive and as such, this Court do not find any infirmity in the judgments of the trial Court as well as the Appellate Court. Hence, this Court decides that the revision, which is devoid of merits, is liable to be dismissed.

13. At the time of arguments, the learned counsel for the petitioners would strongly contend that the respondent has not complied with the interim order passed by this Court in Crl.M.P.(MD) No.2634 of 2017, dated 24.03.2017. Considering the other facts and circumstances and also the facts that the respondent has not complied with the interim order, this Court decides that the respondent is to be mulcted with costs and the above point is answered accordingly.

14. In the result, this Criminal Revision Case is dismissed with costs.

Sd/-

Assistant Registrar (A.S)

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Sub Assistant Registrar(CS)

das

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The II Additional District and Sessions Judge,
Thanjavur.

2.The Judicial Magistrate, Thiruvaiyaru.

3.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.A.EBENEZER, Advocate (SR-6824[F] dated 24/02/2021)

Order made in
CRL.R.C. (MD) .No.283 of 2017
23.02.2021

KG(CO)

SRS (12/03/2021) 5P : 5C