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Crl.R.C.No.381 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.03.2022

PRONOUNCED ON : 07.04.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.381 of 2018

and

Crl.M.P.No.4650 of 2018

S.Parveen Banu

... Petitioner

Versus

Mohamed Sabtar Hussain

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of the Code of Criminal Procedure, to call for the records pertaining to the order in C.M.P.No.280 of 2016 dated 22.10.2016 in D.V.O.P.No.160 of 2013 by the Additional Mahalir Court, Salem and set aside the same.

For Petitioner : Mr.M.Pari

For Respondent : Mr.K.Murugesan

Legal Aid Counsel.

ORDER

The petitioner/wife herein had filed a Domestic Violence Complaint in D.V.O.P.No.160 of 2013 seeking various reliefs before the Judicial Magistrate/Mahila Court, Salem. Learned Judicial Magistrate/Mahila Court



after examining both sides and after perusing the three documents marked on the side of the petitioner, has passed the following order:-

“The respondent was directed to pay monthly rent of Rs.2,000/-, further to return 20 sovereigns of gold jewels, house articles, bureau, cot and other articles of the petitioner, pay a sum of Rs.4,000/- for maintenance of the petitioner and her child and to pay Rs.1,50,000/- as compensation.”

2. Thereafter, C.M.P.No.280 of 2016 was filed by the respondent/husband under Section 25(2) of the D.V Act. The primary ground on which, miscellaneous petition was filed by the respondent/Husband is that, during cross examination of his wife in O.S.No.16 of 2007, she admits that the jewels of 20 sovereigns were given during the marriage and nothing to show these jewels are retained by respondent/husband. Further the compensation of Rs.1,50,000/- paid. As there was no material against the respondent and family members filed u/s 498 A in C.C.No.155 of 2013 ended in acquittal. The learned Judicial Magistrate/Additional Mahila Court, Salem by order dated 22.10.2016 in C.M.P.No.280 of 2016 held that the petition under Section 25(2) is maintainable and modified the order passed in



D.V.O.P.No.160 of 2013, to the extent of returning 20 sovereigns of stridhana jewels by respondent/husband. Aggrieved against the same, the petitioner had filed this petition.

3. The primary contention of the petitioner is that as per the order in the main D.V.C case, particularly in paragraph 17, it is recorded that the lower Court granted relief to the petitioner/wife invoking Section 19(8) of the D.V. Act. He further submits that in view of the same, the petition to modify the order passed in D.V.C.No.160 of 2013 dated 05.12.2015 under Section 25(2) is not maintainable.

4. The learned counsel for the respondent submits that Section 25(1) is clear that a protection order made under Section 18 shall be in force till the aggrieved person applies for its discharge, as per Section 25(2) if the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.



5. He would submit that order under Sections 18 & 19 of the said Act are passed for the benefit of the aggrieved person, any modification or revocation, aggrieved person as well the respondent can approach the concerned Court u/s 25 of the Act.

6. Section 25 (1) deals with protection order modification made under Section 18 and Section 25(2) deals with any modification or revocation order made under the Act. Section 18(e) specifically deals with restriction in alienation of the stridhana articles, Section 19(8) deals with return of stridhana articles. In this case, with regard to handing over stridhana articles modification of such order is permissible under Section 25(2) of the Act.

7. Considering the submission and on perusal of the materials, it is seen that the petitioner aggrieved person, had sought return of stridhana articles, maintenance, rent for house and compensation. The petitioner herein is aggrieved, on the revocation order passed relating to return of the stridhana articles. Further contended that entertaining petition under Section 25(2) is not maintainable.



8. The petitioner questions, entertaining and maintainability of the petition u/s. 25(2) of the Act and challenges the order passed in C.M.P.No.280 of 2016 dated 22.10.2016 by the lower Court. Though vehement submissions advanced, the contention of the petitioner is that the lower Court is not empowered to entertain a petition under Section 25 seeking modification or revocation of order passed both under Sections 18 & 19 of the Act. The petitioner's contention is not sustainable as per Section 25, any order made under the Act, requiring alteration, modification or revocation in change of circumstances can be entertained. Hence, the petitioners contention is not sustainable. If at all the petitioner is aggrieved, she can file appropriate petition to the Sessions Court and seek remedy. On the contrary, the petitioner had approached this Court, without legal standing.

9. In view of the same, this Court finds, the lower Court entertaining the petition and passing order in C.M.P.No.280 of 2016 dated 22.10.2016 under Section 25(2) is perfectly in order. Hence, this Revision Petition is liable to be dismissed.



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10. This Court places its appreciation to the legal aid counsel for the respondent for thorough preparation and strenuously defending the case.

11. Accordingly, this Criminal Revision Petition is dismissed.

Consequently, connected miscellaneous petition is closed.

07.04.2022

Index: Yes/No I
Internet: Yes/No
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To

1.The Judge,
Additional Mahalir Court,
Salem.

2.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR,J.



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PRE-DELIVERY ORDER IN

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