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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.430 of 2016

and

Crl.M.P.No.2860 of 2016

A.D.Velayudham

...Petitioner/1st Respondent

Versus

M.Malathi

...Respondent/Complainant

PRAYER : Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. to set aside the judgment passed in Crl.A.No.238/2015 dated 26.11.2015 by the learned XVI Additional City Civil Court, Chennai against C.C.No.3472 of 2011, X Metropolitan Magistrate, Egmore, Chennai - 8.

For Petitioner : Mr.T.Saravanan,
Legal Aid Counsel

For Respondent : Mrs.S.Priyadharshini
Legal Aid Counsel

O R D E R

This Criminal Revision is filed to set aside the judgment made in Crl.A.No.238 of 2015 dated 26.11.2015 by the learned XVI Additional City Civil Court, Chennai, against the order in C.C.No.3472 of 2011 dated 14.07.2014 by the learned X Metropolitan Magistrate, Egmore, Chennai.

2.The petitioner is the respondent in a Domestic Violence complaint filed by the respondent in C.C.No.3472 of 2011. The respondent had lodged a complaint to the Protection Officer on 01.06.2011. In the complaint she had stated that her father had given an advertisement for alliance in the Hindu and on seeing the same, the petitioner's mother contacted her and thereafter she had persisted and pressurized to marry the petitioner.

3.The petitioner is the Doctor who lost his wife in a train



accident and he is with a child. Taking pity on the child, she had sacrificed her life and agreed to the parents to be the second wife of the petitioner. During the marriage customary sreedhana articles were presented. After the marriage, the respondent was residing along with the petitioner, her mother-in-law, father-in-law and brother-in-law in Sakthi Nagar, Porur along with Master Surya, son born to the petitioner and his deceased wife Dr.V.Sumathy.

4.The marriage was solemnized on 29.04.2007 thereafter on 01.06.2007 she was forcefully sent out from the matrimonial home under the pretext of Aadi month and later she was not allowed into the house. The respondent gone along with her father and even attended the house warming function at Nellore. Later giving one reason or other she was not allowed into the matrimonial home. Thereafter, she lodged a complaint.

5.The contention of the petitioner is that the respondent after the marriage lived with the petitioner only for a short period of one month. She insisted the petitioner to leave his parents alone and have a nucleus family. The petitioner's mother is a cancer patient and father is the heart patient. Further she was too possessive and not allowing to even mingle with the family members and to be happy with his son Master Surya. The respondent had voluntarily left the matrimonial home, for which the petitioner initially filed HMOP.No.131 of 2007 for restitution of conjugal rights on 19.06.2007 and the same was dismissed for default. Thereafter, HMOP.No.99 of 2008 was filed seeking divorce on the ground of cruelty. Coming to know about the filing of this divorce petition, as a counter blast the respondent filed HMOP.No.149 of 2008 for restitution of conjugal rights. The Family Court by common judgment dated 28.02.2011 in HMOP.No.99 and 149 of 2008 dismissed the divorce petition of the petitioner and allowed the restitution of conjugal rights filed by the respondent. Thereafter, she had not taken any steps to join the family.

6.The learned counsel for the petitioner further submitted that on the contrary she had lodged a complaint to the Protection Officer on 01.06.2011. In the complaint, she had arrayed her mother-in-law, father-in-law, sister-in-law and brother-in-law as respondents R2 to R5. R4 Sister-in-law was married earlier. The trial Court viz., X Metropolitan Magistrate, Egmore, finding that the petitioner had suppressed many vital facts and not come out with the truth and also on the further admission by the respondent that she wanted a nucleus family and asked the petitioner to move away from the father and mother being the reason and further the desertion by the respondent was on her own volition and also finding that the respondent is a professor in a reputed college and earning a sum



of Rs.30,000/- dismissed the domestic violence petition.

7. Aggrieved against the same, the respondent preferred an appeal before the Sessions Judge in CrI.A.No.238 of 2015 on the file of XVI Additional Sessions Court. The learned XVI Additional Sessions Judge by judgment dated 26.11.2015 confirmed the acquittal of the in-laws viz., R2 to R5 and set aside the acquittal against the petitioner R1 and passed a protection order in favour of the respondent directing the petitioner to provide shelter or alternatively to pay a sum of Rs.15,000 per month and also pay compensation of Rs.10,00,000/-. Assailing this point the present revision is filed.

8.The learned counsel for the respondent submitted that the respondent was chased away from the matrimonial home and the respondent does not dispute the marriage and the short duration of the marriage life. She further submitted that the respondent was sent out of the matrimonial home on 01.06.2007 and thereafter she was not allowed to enter into the matrimonial home again. This has been clearly stated in her restitution of conjugal rights petition in HMOP.No.148 of 2008 which was filed during April 2008. She further referred to the domestic violence complaint and submitted how she was forcefully sent out of matrimonial home and how she was subjected to cruelty on the ill-advice of his parents, brother and sister have been clearly narrated. Further on 01.09.2007, the respondent had gone to the house of the petitioner to collect her jewels and the sarees. At that time, only six sarees were given and the other articles retained. Thereafter, she approached the Police complaining that she was beaten by her mother-in-law with a broom stick and subjected her to physical and mental torture. The petitioner being a Doctor on the pretext of pursuing his higher education used to stay mostly in the Hospital guest house and avoided the respondent. The respondent was made as a baby sitter taking care of petitioner's son and looking after his parents. Despite the respondent being a Post Graduate in Engineering, a qualified person she was forced to attend small menial works and treated as a housemaid. Further the respondent in her evidence categorically state that the torture was psychological, the petitioner never used to speak to her. As per Section 22 of the Domestic Violence Act, mental torture and emotional distress would amount to domestic violence and they are entitled for appropriate compensation.

9.The trial Court failed to appreciate the evidence in its proper perspective and acquitted the petitioner finding that the respondent is employed. The lower appellate Court rightly weighted the materials and evidence independently and found that the respondent was subjected to mental torture, ordered protection for residence and also ordered compensation.



10. Upon considering the submissions and materials available on record, it is not in dispute that the marriage between the petitioner and the respondent took place on 29.04.2007 and the admitted case of the respondent is that she left the matrimonial home on 01.06.2007 admittedly they were living together only for about 30 days. Both are educated, petitioner is a Doctor and the respondent is the Post Graduate in Engineering, employed as Lecturer. Primarily the dispute arose, since the respondent forced the petitioner to leave his parents and set up a independent nucleus family. In our society joint family and living with parents is common and it is not only common, it is an obligation for every son to take care of his aged parents. The respondent knowing about the family background and status of the petitioner had agreed for the marriage and later forcing the petitioner for a nucleus independent family is not acceptable. More so when the petitioner's parents are aged and sick persons. Due to which there seems to be some misunderstanding and the respondent left the matrimonial home.

11. On the facts of this case, the marriage was in the year 2007 and thereafter the maintenance case was initiated. After four years the complaint was lodged on 01.06.2011. No reason was given for the delay. The domestic violence complaint should be immediate. The Domestic Violence Act was enacted to provide immediate speedy relief to the needy persons. Further from the own admission of the respondent it is seen that there is no offence made out for any domestic violence. The trial Court on consideration of the evidence and materials had given a detailed well reasoned finding, the lower appellate Court, wrongly appraised the evidence and ordered protection to the respondent which she is not entitled.

12. In view of the same, this Court is inclined to set aside the judgment made in Crl.A.No.238 of 2015 dated 26.11.2015 by the learned XVI Additional City Civil Court, Chennai and confirm the order in C.C.No.3472 of 2011 dated 14.07.2014 by the learned X Metropolitan Magistrate, Egmore, Chennai.

13. Accordingly, this Criminal Revision is allowed, the judgment made in Crl.A.No.238 of 2015 dated 26.11.2015 by the learned XVI Additional City Civil Court, Chennai is set aside and the order in C.C.No.3472 of 2011 dated 14.07.2014 by the learned X Metropolitan Magistrate, Egmore, Chennai is confirmed. Consequently, the connected criminal miscellaneous petition is closed.

14. This Court places special appreciation to the Legal Aid Counsel Mr.T.Saravanan, learned counsel for the petitioner and Ms.S.Priyadharshini, learned counsel for the respondent for thorough preparation and effective submissions made on the case



of the petitioner and the respondent based on the documents that was available with them.

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Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

dsa

To

1. The XVI Additional Judge,
The XVI Additional City Civil Court,
Chennai.
2. The X Metropolitan Magistrate,
Egmore, Chennai.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.S.Priyadharshini, Advocate, S.R.No.29212

+1cc to Mr.T.Saravanan, Advocate, S.R.No.29314

Cr1.R.C.No.430 of 2016

VG-II(CO)
RGA(20/05/2022) (23/05/2022)