



Crl.R.C.No.568 of 2021 and
Crl.M.P.No.9455 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.568 of 2021 and
Crl.M.P.No.9455 of 2021

1. R.Sokkalinga Karthikeyan
2. S.Sona Ramanathan

...Petitioners

-Vs-

P.Muthazhagu @ Priya

...Respondent

Prayer: Criminal Revision Case filed under Sections 397 read with Section 401 of Cr.P.C. to call for the records culminating in the impugned judgment dated 18.12.2020 passed in C.A.No.277 of 2019 by the learned IV Additional District and Sessions Judge, Coimbatore, confirming the judgment dated 27.05.2019 passed in D.V.A.No.43 of 2016 by the learned Judicial Magistrate No.II, Coimbatore, examine the correctness, legality and propriety of the findings made therein and set aside the same.



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For Petitioner : Mr.A.Aravindan

For Respondent : Mr.S.Arjun

ORDER

The first petitioner is husband, second petitioner is his father and the respondent is the wife. The respondent filed a complaint before the Protection Officer under the Domestic Violence Act and the case was taken on file in D.V.A.No.43 of 2016 by the learned Judicial Magistrate No.II, Coimbatore, for the reliefs of maintenance, return of jewels, marriage expenses, expenses for setting up separate family in Chennai and for compensation. After enquiry, the learned Magistrate, by an order dated 27.05.2019 ordered a sum of Rs.20,000/- as monthly maintenance and also ordered to pay a sum of Rs.8,80,360,- towards expenses for marriage and setting up of separate family in Chennai, within a period of two months, and rejected the claim of compensation.



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2 Aggrieved over the said order of the learned Magistrate, the petitioners have preferred an appeal in C.A.No.277 of 2019 and the learned IV Additional District and Sessions Judge, Coimbatore, after hearing both the counsel, while re-appreciating the materials, found that there is no perversity in the order of the learned Magistrate and hence by judgment dated 18.12.2020 dismissed the appeal.

3 Challenging the concurrent judgment of both the Courts below, the petitioners have preferred the criminal revision before this Court.

4 The learned counsel appearing for the petitioners would submit that the learned Magistrate passed the order based on the presumption and surmise of conjugation, which are not relevant to the circumstances of the present case on hand. However, he would submit that both the Courts below have failed to consider the nullity of marriage between the first petitioner and the respondent. No documentary evidence was produced to prove that the respondent/wife spent Rs.10.00 lakhs for marriage. Mere piece of paper

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filed by the respondent/wife, which is not admissible in evidence and based on the inadmissible evidence, the Court below ordered Rs.6,80,360/- towards marriage expenses. The lower appellate Court also failed to re-appreciate the evidence and simply endorsed the views of the trial Court. There are material contradictions in the evidence of the respondent/wife and her evidence was not supported by the any reliable materials. Both the Courts below have failed to consider the entire materials and the defence taken by the petitioner in the counter and passed the order only based on the sympathy.

5 The main contention raised by the respondent/wife is that the marriage was not consumed and the same was also nullified. Further the respondent contended that the petitioner is not fit for conjugal relationship. But now the first petitioner married another woman and got child also, which clearly shows that the respondent filed a false complaint against the petitioner and she is not entitled to get maintenance and also other reliefs.

6 The learned counsel for the petitioners would further submit



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that the petitioner also spent money for the marriage by sharing equally, which was not considered by the trial Court. Without any materials, the trial Court came to the conclusion that the respondent only spent money for the marriage and also ordered a sum of Rs.2.00 lakhs towards cost for setting up of separate family. Unfortunately, the lower appellate Court also, without re-appreciating the materials in a right perspective, confirmed the order of the learned Magistrate, which warrants interference of this Court.

7 The learned counsel appearing for the respondent/wife would submit that the first petitioner suppressed the entire facts and fraudulently married the respondent and entire marriage expenses of Rs.10.00 lakhs were borne by the respondent's family only and in addition to that after the marriage they wanted to set up separate family, for which also the respondent's family spent a sum of Rs.2.00 lakhs. Now the fact is that the marriage was dissolved as nullity and the first petitioner also got second married, whereas, the respondent is suffering for the fraud committed by the petitioners. Therefore she filed a case under Domestic Violence Act and the learned Magistrate also after due enquiry, has rightly ordered maintenance



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of Rs.20,000/- and also granted the other reliefs. The petitioners, except making some balled allegations by way of defence in the counter, no document was produced by the petitioners to substantiate their defence. Therefore considering the materials produced by the respondent/wife, the Magistrate ordered return of marriage expenses and also the expenses borne by the respondent for setting up of separate family. The learned Magistrate has not even ordered any amount towards compensation and considering the facts and circumstances, the respondent/wife kept quite, since she lost her life and future. But, the first petitioner/husband is not even paying the meager amount awarded by the Court below and dragging on the proceedings and made the respondent to run pillar to post, by misusing the provisions of law. Therefore the present revision is liable to be dismissed with exemplary cost.

8 Heard the learned counsel appearing on either side and perused the materials available on record.

9 The marriage between the first petitioner and the respondent is



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admitted and it is also an admitted fact that the marriage was dissolved.

Subsequently the respondent/wife filed a petition seeking maintenance, return of jewels, marriage expenses of Rs.10.00 lakhs and Rs.2.00 lakhs for setting up separate family in Chennai and also compensation of Rs.5.00 lakhs. The learned Magistrate, carefully considered the claim of the respondent/wife and the documents produced by the respondent, ordered Rs.20,000/- as monthly maintenance and directed the petitioners to pay a sum of Rs.6,80,360/- towards marriage expenses and Rs.2.00 lakhs towards expenses for setting up separate family and rejected the claim of compensation. Aggrieved against the same, the petitioners have preferred an appeal and the same was dismissed by confirming the order of the learned Magistrate, against which the petitioner are before this Court.

10 Even though the learned counsel for the petitioners contended that the the petitioners also spent money for the marriage and setting up of separate family, both the Courts below have failed to consider the same and erroneously ordered for return of money, but, a careful reading of the entire materials would go to show that based on the materials produced by the



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respondent/wife, the trial Court passed the order. The petitioners to substantiate their defence, have not produced any materials and they should have examined any witnesses to prove that they have also spent money or they should have subjected the prosecution witnesses for cross examination. In the absence of the same, the trial Court considering the materials produced by the respondent/wife ordered to pay Rs.6,80,360/- for marriage expenses and Rs.2.00 lakhs for setting up separate family and also ordered maintenance of Rs.20,000/- to the respondent/wife, however dismissed the petition with regard to compensation claimed by the respondent/wife.

11 This Court, while exercising revisional jurisdiction, cannot exercise power of the Appellate Court and this Court, being a revisional Court, cannot sit in the arm chair of appellate Court and it has no power to re-assess the evidence and substitute its views on findings of fact. Further, while deciding the revision, it can only see whether there is any perversity in appreciation of evidence by the Courts below.

12 Accordingly, this Court considering the entire materials on



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record does not find any perversity in appreciation of evidence by the trial Court and re-appreciation of evidence by the lower appellate Court and also the petitioners have not substantiated the defence taken in the counter filed before the Court below. There is no merit in the revision.

13 In the result, this Criminal Revision Case is dismissed as devoid of merit and substance. Consequently connected miscellaneous petition is closed. The petitioners are directed to pay the entire arrears of maintenance and also the amounts as awarded by the Court below within a period of three months from the date of receipt of copy of this order.

26.10.2022

Index : Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order

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To

1. The IV Additional District and Sessions Judge, Coimbatore.
2. The Judicial Magistrate No.II, Coimbatore.

P.VELMURUGAN, J.,

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