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Crl.R.C.No.984 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.984 of 2018
and Crl.M.P.No.11488 of 2018

T.Ponmani

...Petitioner

-Vs-

1.Velusamy
2.Dhavamani
3.Sivakumar
4.V.Kavitha

... Respondents

Prayer: Criminal Revision case filed under Section 397 r/w Section 401 of Code of Criminal Procedure, to set aside the judgment dated 11.06.2018 in C.A.No.36 of 2017 on the file of the Principal Sessions Judge, Namakkal, and restore the orders passed by the learned Magistrate dated 16.06.2017 in D.V.C.No.4 of 2016 on the file of the Judicial Magistrate, Paramathi.

For Petitioner : Mr.S.Kalyanaraman

For Respondents : Mr.B.Vasudevan

ORDER

This Criminal Revision case has been filed to set aside the judgment dated 11.06.2018 in C.A.No.36 of 2017 on the file of the Principal Sessions Judge, Namakkal, and restore the orders passed by the learned Magistrate dated



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16.06.2017 in D.V.C.No.4 of 2016 on the file of the Judicial Magistrate,

Paramathi.

2. This Revision has been filed as against the judgment dated 11.06.2018 passed in C.A.No.36 of 2017 on the file of the Principal Sessions Judge, Namakkal, thereby setting aside the judgment passed in D.V.C.No.4 of 2016 on the file of the Judicial Magistrate, Paramathi, thereby ordered right of residence and monthly maintenance of Rs.5,000/- payable by the respondents.

3. The case of the prosecution is that the petitioner got married with one Kumar, who is son of the first respondent herein, on 24.10.2004 and due to their wedlock they gave birth to a female child. Unfortunately, on 11.10.2015, her husband died due to cardiac arrest. At the time of his death, he was working in Raaga Oil Mill and receiving a sum of Rs.5,000/- as monthly salary. During their marriage, the petitioner's family had presented 50 sovereigns of golden jewels and two wheeler along with household articles. The petitioner also made allegations as against her deceased husband that while he was alive for demand of money she was driven out from her matrimonial home and after negotiations, they joined together. After demise of her husband, the petitioner along with her minor child were living in her husband's house. However, the respondents



prevented them from residing there and she driven out from the matrimonial home. Hence the complaint. Further, the petitioner also initiated suits for partition in respect of the subject property and along with other property owned by the respondents herein, which is pending.

4. She, in order to prove her case, examined PW1 to PW3 and marked Exs.P1 to P10 and on the side of the respondents they were examined DW1 and DW2 and marked Exs.R1 to R6 as exhibits.

5. On perusal of oral and documentary evidence, the trial Court ordered monthly maintenance of Rs.5000/- each to the petitioner and her minor daughter by the respondents one and two and the respondents were restrained from interfering with the peaceful possession and enjoyment of the petitioner in the residence. The respondents were preventing the right of residence of the petitioner and the respondents are directed to not to disallow the petitioner to reside there. Aggrieved by the same the respondents preferred an appeal and the same was allowed and the finding of the trial Court stood restored for two reasons (i) the provision under Section 12(1) of Domestic Violence Act, 2005, is clear that only after getting Domestic Incident Report from the Protection Officer, the trial Court shall pass any order, and in the case on hand, no



reference has been made to the Protection Officer and no domestic incident report has been received by the Magistrate from the Protection Officer, and (ii) as per the provision under Section 12(5) of Domestic Violence Act, 2005, it is clear that the application made under sub-section (1) shall be disposed within a period of sixty days from the date of its first hearing. But in the case on hand, it was disposed of only after one year. Therefore, the Appellate Court set aside the order passed by the trial Court and allowed the appeal.

6. The provision under Section 12(1) of Domestic Violence Act, 2005, says that an aggrieved person can file an application before the Magistrate seeking relief as contemplated under Section 18 to 22 provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report issued by him from the Protection Officer or the service provider. Therefore, it does not mandates the Magistrate only after getting the domestic incident report, the Magistrate shall pass order. While passing any order under such application submitted by the aggrieved person, the Magistrate shall take into consideration any domestic incident report received from the Protection Officer. In the case on hand, no complaint has been lodged before the Protection Officer and no domestic incident report was received by the trial Court.



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7. That apart, the trial Court conducted a detailed enquiry and passed order. In fact, the petitioner examined PWs1 to 3 and marked Exs.P1 to P10. The respondents examined DW1 and DW2 and marked Exs.R1 to R6 as exhibits. The Appellate Court committed patent error in setting aside the order passed by the trial Court.

8. In so far as, the period under Section 12(5) of Domestic Violence Act, 2005, is concerned, to dispose the application, a period of 60 days is stipulated. Though, the Act provided 60 days, it does not bar the trial Court to dispose the matter even after a period of 60 days. The intention of legislature is to keep equal remedy for the aggrieved person and as such, the Act fixed time for disposal of review application filed under the Domestic Violence Act, disposed within a period of 60 days. Now the trial Court completed the trial and passed order. Therefore, after passing an order it cannot be set aside on the ground that it should be complied within a period of six days. Therefore, on both the grounds, the Appellate Court committed very serious error in allowing the appeal. In so far as, the right of residence is concerned, the petitioner and her minor daughter are entitled to get a relief of right of residence in the address given by the petitioner though, the partition suit is pending between the



petitioner and the respondents.

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9. Further, the petitioner and her minor daughter are entitled for monthly maintenance from the respondents one to three. Admittedly, the respondents one and two are her father-in-law and mother-in-law. After demise of her husband, the petitioner filed a petition seeking relief under Section 18 to 22. The monthly maintenance is provided under Section 20 of the Domestic Violence Act. Accordingly, any aggrieved person can seek relief as against the respondents as provided under Sections 18 to 22. The respondents means any adult male person who is , or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act. The domestic relationship means the relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the name of marriage, adoption or are family members living together as a joint family. Therefore, the petitioner, being an aggrieved person, can seek relief as monthly maintenance only as against her husband.

10. Admittedly, the petitioner sought for maintenance from her in laws.

That apart, the respondents one and two are the persons who never received any



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terminal benefits or any family pension of their deceased son. Therefore, the petitioner and her daughter are not entitled for any monthly maintenance from the respondents one and two herein.

11. Accordingly, the Criminal Revision case is partly allowed. The respondents are restrained from indulging in any hindrance in the peaceful right of residence of the petitioner in the given address. Consequently, connected miscellaneous petition is closed.

20.10.2022

Index : Yes/No
Speaking/Non Speaking order
ata

To

G.K.ILANTHIRAIYAN. J,

ata

1. The Principal Sessions Judge,
Namakkal.
2. The Judicial Magistrate,
Paramathi.



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