



Crl.R.C.No.931 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>23.09.2022</i>
<i>Pronounced on</i>	<i>13.10.2022</i>

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.931 of 2022

B. Lakshmi

... *Petitioner/Complainant*

Vs.

1.D. Balasubramanian

2.D. Gunasundari

Respondents/Respondents

...

Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C., to call for the records pertaining to the order dated 20.05.2022 passed in Crl.A.No.150 of 2021 by the Vth Additional Judge, City Civil Court, Chennai so far as the denial of relief of compensation for the mental agony, right of residence and return of gold jewels and silver articles sought for by the petitioner herein.

For Petitioner : Mr.R.Sankarappan

For Respondents : Mr.M.Sreedhar



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ORDER

This Criminal Revision Case has been filed challenging the order dated 20.05.2022 passed in Crl.A.No.150 of 2021 by the Vth Additional Judge, City Civil Court, Chennai.

2. The revision petitioner is the wife, the first respondent is the husband and the second respondent is the sister of the first respondent.

3. Based on the complaint given by the petitioner/wife against the respondents, a case was filed by the Protection Officer and the same was taken up on file in DVC.No.423 of 2017 by the XIV Metropolitan Magistrate, Egmore, Chennai. After the inquiry, the learned Magistrate dismissed the petition filed against the second respondent and directed the first respondent/husband to pay the expenses spent towards the 2nd, 3rd and 4th academic year education of the elder daughter of the petitioner/wife to the tune of Rs.2,10,000/- within a period of two months from the date of the said order. The trial Court has not granted any other relief to the petitioner/wife as she was not eligible for the said reliefs and dismissed the petition with respect



to all other reliefs. Challenging the said order, the petitioner/wife filed an appeal before the learned V Additional Sessions Judge in Crl.A.No.150 of 2021, the learned Appellate Judge allowed the appeal in part in respect of the relief of maintenance and dismissed the appeal in respect of all other reliefs sought for by the petitioner/wife and further, directed the first respondent/husband to pay a sum of Rs.25,000/- per month towards maintenance for the petitioner/wife from the date of petition.

4. Aggrieved over the said order passed by the Appellate Court, the petitioner/wife has filed the present revision before this Court.

5. The learned counsel for the petitioner/wife would submit that the evidence has to be given only on the basis of the pleadings in the case and it is a settled proposition of law that no evidence can be given without looking into the pleadings to that effect. Even if the evidence is let in, the Court need not look into the same. In this case, there are no pleadings on the side of the respondents and therefore, the evidence given by the first respondent/husband and the cross made by the first respondent/husband of the petitioner/complainant, need not be looked into. Further, as the counter is not



valid, the respondents should have been set exparte and the evidence in chief given by the petitioner/wife and the documents filed by her, should have been perused but the trial Court failed to consider the same and passed the orders of granting educational expenses alone. Even the Appellate Court failed to consider the same and ordered to pay only the maintenance amount and has not allowed the other reliefs sought for by the petitioner. Therefore, the order of the trial Court is liable to be set aside and the order of the Appellate Court with respect to the dismissal of the claim of residential right is also liable to be set aside. Though the petitioner/wife sought for several reliefs before the trial Court, the petitioner/wife is now pressing only for the relief of shared household in the new house built by the first respondent/husband.

6. The learned counsel for the respondents denied the submission of the learned counsel for the petitioner/wife that the first respondent/husband has got a new house and further he would submit that the second respondent who is the sister of the first respondent/husband is old and she is residing in the old house.

7. At this juncture, the learned counsel for the petitioner/wife would



contend that apart from the old house which belongs to the second respondent, the first respondent/husband himself has admitted that he has got a new house and the said admitted fact need not be proved. He would further submit that in the new house, there are three portions in which one of the portions can be allotted to the petitioner/wife.

8. Heard the learned counsel for the petitioner/wife and the learned counsel for the respondents and perused the materials available on records.

9. The relationship of the parties is not in dispute. The petitioner is the wife, the first respondent is the husband and the second respondent is the first respondent's sister. The petitioner/wife filed a complaint before the Protection Officer against the respondents for domestic violence and based on the report of the Protection Officer, the case was taken up on file in DVC.No.423 of 2017 by the XIV Metropolitan Magistrate, Chennai. Though the petitioner/wife claimed maintenance, shared household, compensation, return of jewels, protection order and also the educational expenses of the elder daughter, the learned Magistrate after the inquiry, granted only the educational expenses of the elder daughter and dismissed the petition in respect of the



other reliefs. Challenging the said order, the petitioner/wife filed an appeal before the V Additional Sessions Judge, Chennai in Crl.A.No.150 of 2021 and the learned Appellate Judge granted a sum of Rs.25,000/- per month towards the maintenance for the petitioner and disallowed the appeal in respect of the other reliefs sought for by the petitioner. Admittedly, the first respondent/husband has not challenged the judgment of maintenance passed by the Appellate Court and only the petitioner/wife has challenged the judgment of the Appellate Court, dismissing the appeal in respect of the other reliefs viz., shared household, return of jewels, protection order and compensation and preferred the present revision before this Court.

10. On perusal of the materials placed before this Court, it is seen that the first respondent/husband himself admitted that he has a separate house. Once it is admitted that the husband has a separate house and when the wife has no independent residence, as per the law, it is the duty of the husband to provide accommodation to the wife and in the absence of the husband, it is the duty of the in-laws to make arrangement of shared household/accommodation.

11. In this case, the first respondent/husband admitted that he has got



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residence but he has not proved that the petitioner/wife has independent residence and the trial Court as well as the Appellate Court also failed to consider the same. The learned counsel for the appellant also pressed only for the shared household and not pressing for the other reliefs.

12. Therefore, the order passed by the Appellate Court with respect to the residential right is hereby set aside and the first respondent/husband is directed to allot one of the portion of his new house to the petitioner/wife for her accommodation.

13. With the above direction, this Criminal Revision Case is partly allowed.

13.10.2022

Speaking Order/Non Speaking Order

Index : Yes/No

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P.VELMURUGAN, J.

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To

The Vth Additional Judge,
City Civil Court,
Chennai.

Pre-delivey Order in
Crl.R.C.No.931 of 2022

13.10.2022