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Crl.O.P No.22690 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2022

CORAM :

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.22690 of 2021

and

Crl.M.P No.12346 of 2021

Rajeshwari

... Petitioner

Vs

1.G.Sundaram

2.Suresh

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order of the learned Judicial Magistrate, Additional Mahila Court, Salem dated 18.02.2020 passed in Crl.M.P No.3087 of 2019 in D.V.C No.80 of 2014.

For Petitioner : Ms. J.Prithivi

For Respondents : Mr.B.Gopalakrishnan for R1 & R2

ORDER

The Criminal Original Petition has been filed, to set aside the order of the Judicial Magistrate, Additional Mahila Court, Salem dated



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18.02.2020 made in Crl.M.P No.3087 of 2019 in D.V.C No.80 of 2014.

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2. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3. The petitioner is the wife of the 2nd respondent, who had filed the domestic violence complaint against him in D.V.C No.80 of 2014; the residential and protection order has been passed by the Magistrate on 31.10.2017 by giving right to reside at Door No.40, Park Street, Salem-636 001. In the said order, it is stated that it is the residence of the 2nd respondent, who is the husband of the petitioner; however, the father of the 2nd respondent had filed a petition in Crl.M.P No.3087 of 2019 to direct the petitioner to vacate the house bearing Door No.40, Park Street, Salem; the said petition was allowed on 18.02.2020; aggrieved over that, this petition has been preferred.

4. The learned counsel for the petitioner submitted that the stay petition in Crl.M.P No.3087 of 2019 in D.V.C No.80 of 2014 has been filed by the father-in-law of the petitioner, who is not a party to the



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domestic violence proceedings and he cannot be considered as an aggrieved person, in view of Section 2(a) of the Protection of Women from Domestic Violence Act, 2005; an opportunity of hearing was not given to the petitioner and hence the order should be set aside.

5. The learned counsel for the respondents submitted that the house in which the residential right has been given belongs to the 1st respondent absolutely and the 2nd respondent does not have any right over the same and hence, no right of residence can be accorded in the said house.

6. It is seen from the order of the learned Judicial Magistrate, Additional Mahila Court, Salem, it has been observed that the house exclusively belongs to the father-in-law of the petitioner; the 2nd respondent in his capacity as the husband should do the needful for the accommodation of the petitioner. However, the grievance of the petitioner is that she was not given with the right of audience in that petition. When a petition has been filed to direct the petitioner to vacate the premises where she is residing, the Court ought to have given an



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opportunity for hearing her submission. Since no such opportunity was given, I feel it is appropriate to set aside the order and remand the matter back to the learned Judicial Magistrate, Additional Mahila Court, Salem to hear it afresh after giving notice to the petitioner also.

7. With the above observation, this Criminal Original Petition is disposed of and the order of the learned Judicial Magistrate, Additional Mahila Court, Salem made in Crl.M.P No.3087 of 2019 in DVC No.80 of 2014 dated 18.02.2020 is set aside and the matter is remanded back to the learned Magistrate. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/ No
Speaking Order: Yes/No
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To

The Judicial Magistrate,
Additional Mahila Court,
Salem

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R.N.MANJULA, J

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