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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

CrI.R.C.No.503 of 2017

V.Veyilmuthu

...Petitioner/Accused

Vs.

V.Parvathavardhini

...Respondent/Complainant

Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code, to set aside the impugned order dated 27.01.2017 passed by the VI Additional Sessions City Civil Court at Chennai in C.A.No.140 of 2012 which modified the order dated 01.03.2012 passed by the XXIII Metropolitan Magistrate, Saidapet in CrI.M.P.No.5268 of 2008.

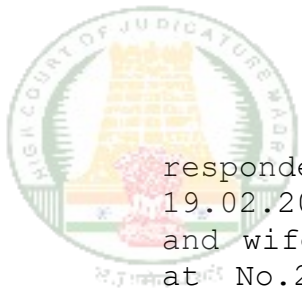
For Petitioner : Ms.Abirami Prabhu
For M/s.BFS Legal

For Respondent : Mr.M.Yokesh

ORDER

This Criminal Revision Case has been preferred challenging the judgment of the VI Additional Sessions City Civil Court, Chennai, dated 27.01.2017 in C.A.No.140 of 2012, which modified the order of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, dated 01.03.2012 made in CrI.M.P.No.5268 of 2008.

2. The revision petitioner before me is the husband. The respondent wife has filed a petition before the XXIII Metropolitan Magistrate, Saidapet, Chennai under the Domestic Violence Act by claiming various reliefs like (i) Protection order (ii) prohibitive order (iii) order of maintenance and (iv) Compensation. It is alleged by the



respondent wife that the petitioner and herself got married on 19.02.2000 and thereafter, they were living together as husband and wife at Mukkani and thereafter, lived in the house situated at No.25/9, 4th cross street, Indira Nagar, Alwarthirunagar, Chennai-87; on the allegations that her husband had concealed his earlier marriage with one Gandha and that he got one daughter through her, he married the respondent; when she questioned him about this, he filed a divorce petition before the Sub Court, Tuticorin in H.M.O.P.No.114 of 2001, which has been subsequently transferred to the Family Court, Chennai; the petitioner had also ill treated the respondent by causing physical violence, emotional violence and seized her jewels and attempted to dispossess her from her residence. By alleging the above said reasons, the respondent has filed the Domestic Violence petition for claiming the reliefs of protection order, prohibitive order, maintenance order and compensation.

3. During the enquiry proceedings, on the side of the respondent wife two witnesses were examined as PW.1 and PW.2 and five (5) documents have been marked as Ex.P1 to Ex.P5. On the side of the revision petitioner/husband no witness has been examined and no document was marked.

4. After the conclusion of the enquiry proceedings, the learned Magistrate dismissed the petition. Aggrieved over that, the wife filed a Criminal Appeal before the VI Additional Sessions City Civil Court, Chennai in C.A.No.140 of 2012. After hearing the appeal, the learned appellate Judge had modified the order of the trial Judge and granted the relief of protection order, prohibitive order and order of maintenance to pay a sum of Rs.5,000/- per month and ordered to pay a compensation of Rs.50,000/-. Aggrieved over that, the husband has preferred this criminal revision case.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

6. The learned counsel for the revision petitioner submitted that the petitioner and the respondent lived together as husband and wife hardly for a few months and thereafter, they got separated; in fact the respondent has filed a maintenance case in M.C.No.1 of 2002 before the Judicial Magistrate, Sathankulam, as early as in the year 2002, only because they got separated at that time itself; the house in which, the respondent claims to be residing in the house belonged to one Ponnaiyan; but neither the petitioner nor the respondent is residing there; in fact the communications sent to



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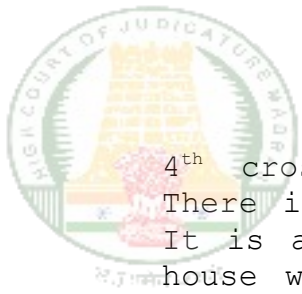
the respondent to the said address got returned by stating that the respondent was not residing there; the petitioner himself is an old man who is dependant on someone for his routine life and the respondent is in the habit of filing litigation after litigation against the petitioner and pulling him to Court; the learned trial Judge has appreciated the materials available on record in a correct perspective and hence the order of the trial Judge should be restored by setting aside the order of the appellate Court.

7. The learned counsel for the respondent submitted that despite the maintenance was ordered in M.C.No.1 of 2002 as early as on 27.02.2002, the petitioner omitted to pay the maintenance by complying the order of the Court; the learned appellate Judge has observed in the judgment itself that the original owner Ponnaiyan had deposed evidence that the respondent came to his house as a tenant by telling him that, she was married to the revision petitioner/husband and subsequently the petitioner/husband had purchased the same property; the learned appellate Judge had observed that the petitioner had caused physical violence and emotional violence even in the presence of the house owner Ponnaiyan; the learned appellate Judge had also observed that the petitioner continued to pay the electrical charges and drainage charges for the house which stood in the name of Ponnaiyan; since these facts were omitted to be appreciated by the learned trial Judge, the learned appellate Judge re-appreciated the evidence and passed the right order and granted protection order, prohibitive order, maintenance order and compensation; hence the revision case should be dismissed.

8. Points for consideration:

Whether the order of the learned appellate Judge granting protection order, prohibitive order, order of maintenance for Rs.5,000/- p.m. and the award of compensation of Rs.50,000/- is fair and proper?

9. The fact that the revision petitioner and the respondent got married on 19.02.2000 was not denied. The contention of the petitioner is that immediately after sometime of their marriage they got separated and they have been living separately. It is true that the respondent wife filed a maintenance petition in the year 2002 for claiming maintenance in M.C.No.1 of 2002 before the Judicial Magistrate, Sathankulam. But the claim of the respondent is that even subsequent to that they have been living together and lastly they lived at No.25/9,



4th cross street, Indira Nagar, Alwarthirunagar, Chennai-87. There is no dispute with regard to the ownership of the house. It is admitted by both parties that the original owner of the house was Ponnaiyan. The trial Court has observed that one of the witnesses for the petitioner PW.2 Chandra has stated that the petitioner had purchased the house from Ponnaiyan. But the appellate Court has observed that the Ponnaiyan himself has examined as PW.2 and he has stated in his evidence that the petitioner had purchased the property subsequently.

10. Whoever might be the witness examined before the Court, the fact remains that at the time when the domestic violence petition was filed there was a house in the said property and the respondent was residing there, to substantiate the above facts i.e. the electricity receipts and other receipts pertaining to the house belonging to one Ponnaiya and that was also admitted by the petitioner himself before the Court. When that being the case, it cannot be denied that there was no house existed in the said address as stated by the respondent. Even for the sake of arguments, it is taken as there was no house in the said address and the petitioner also did not reside there, there is no harm in passing the prohibitive order from restraining him not to go to the property and cause any disturbance. The additional typed set filed by the petitioner shows that one Marimuthu filed a suit against the original owner Ponnaiyan, alleging that the respondent had executed a lease deed in his favour by making a right over the property by virtue of an order passed in C.A.No.140 of 2012 and sought relief of injunction. Strangely in the said suit, the respondent was not made as a party. Even in the list of documents, house tax receipts were annexed as documents. So in all probabilities it might be a case filed without the knowledge of the respondent. Still the said documents would also prove that there was a house in the said property and for which, house tax is being paid.

11. The respondent/wife has also equally told that she does not have any avocation. She does not have any other income to maintain herself. It is claimed by the petitioner that he got divorce order against her and at no point of time he was living with her in the alleged address. In support of his contention he also filed a letter obtained from the Superintendent of Post, that the money order which was sent to the address shown by the respondent got "returned to sender". But it is seen that the said letter contained the address as "No.25, 4th Cross street, Indira Nagar, Alwarthirunagar, Chennai-87". The address claimed by the respondent is "No.25/9, 4th Cross street, Indira Nagar, Alwarthirunagar, Chennai-87." The



discrepancy in the door number probably might be the reason for the letters being returned to the sender.

12. Apart from that, the appellate Court has passed a protection order that the petitioner should not harass the respondent in any manner. No harm is going to be caused to the petitioner by the protection order if he is a law abiding person. The next grievance of the petitioner is that he was ordered to pay a sum of Rs.5,000/- p.m., as maintenance in the petition filed under the Domestic Violence Act. In earlier petition in MC.No.1 of 2002 was also filed for the same relief and in which a sum of Rs.500/- p.m., is ordered to be the maintenance payable by the petitioner. Despite the earlier order for maintenance is passed, the petitioner continued to violate the same by not paying any maintenance. The respondent wife is also a helpless woman and she does not have any other source of income. The maintenance amount if any paid by the petitioner in compliance of the earlier order, can be set off against the present order. But it is seen from the earlier order of this Court that the petitioner was making payment of Rs.2,500/- only per month as an conditional order for staying the order of the Court below. In the existing cost of living and other basic necessities of life, awarding of maintenance at the rate of Rs.5,000/- p.m., is very much reasonable. But the learned counsel for the petitioner submitted that a sum of Rs.5,000/- p.m., is still a huge amount for the petitioner, since he is an old person and he is only working as skilled labourer. It is also submitted that he is ready for any one time settlement. But such a possibility could have been worked out during the long phase in which various litigations between the petitioner and the respondent was pending.

13. It is seen from the records that there are some other proceedings pending between the parties before the Family Court. The parties are at liberty to work out for any One Time Settlement. Taking into consideration of the occupation and other circumstances of the petitioner, I feel the maintenance amount alone can be reduced from Rs.5,000/- to Rs.3,500/- per month and the rest of the orders should be allowed to be unaltered.

14. In the result, this Criminal Revision Case is partly allowed and the judgment of the VI Additional Sessions City Civil Court, Chennai, dated 27.01.2017 made in C.A.No.140 of 2012 is modified to the effect that the the petitioner shall



pay a sum of Rs.3,500/- per month towards maintenance instead of Rs.5,000/- per month. Except this modification, all other orders stand confirmed.

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Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The VI Additional Sessions City Civil Court
Chennai

2. The XXIII Metropolitan Magistrate, Saidapet

+1 CC to Mr.H. Thameen Ansari, Advocate sr 7127

+1 CC to M/s.BFS Legal, Advocate sr 6697.

Cr1.R.C.No.503 of 2017

PMK (CO)

SP (02/03/2022)