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Crl.R.C.No.55 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.55 of 2020
and
Crl.M.P.Nos.295 and 296 of 2020

1.Padmanabhan
2.Gunaseelan
3.Vasuki

... Petitioners

Versus

Surya

... Respondent

Criminal Revision Case filed under Section 397 r/w 401 of the Criminal Procedure Code, to set aside the order dated 19.11.2019 made in Crl.A.No.32 of 2019 on the file of the Principal District and Sessions Judge, Krishnagiri in confirming the order dated 15.2.2019 made in D.V.No.3 of 2018 on the file of the Judicial Magistrate, Uthangarai.

For Petitioners : Mr.C.Prabakaran

For Respondent : Mr.E.Kannadasan

ORDER

This Criminal Revision Case has been filed against the order dated 19.11.2019 made in Crl.A.No.32 of 2019 by the learned Principal District and



Sessions Judge, Krishnagiri, confirming the order dated 15.2.2019 made in D.V.No.3 of 2018 on the file of the Judicial Magistrate Court, Uthangarai.

2. The respondent/wife filed a complaint before the Protection Officer under the Domestic Violence Act and the case was referred to the learned Judicial Magistrate, Uthangarai in D.V.No.3 of 2018. The learned Magistrate, after appreciating the entire materials on record, passed an order directing the petitioners herein not to indulge in any domestic violence against the respondent herein. The first petitioner was directed to pay a sum of Rs.10,000/- per month as maintenance to the respondent or otherwise, if he agrees for "one time settlement", he has to pay Rs.10,00,000/- to the respondent under Section 20(3) of Domestic Violence Act and also directed the petitioners 1 to 3 to pay jointly or severally a sum of Rs.7,00,000/- to the respondent towards compensation within 3 months under Section 22 of Domestic Violence Act. The petitioners were also directed to return the gold jewels weighing about 2 ½ sovereigns to the respondent within 30 days and the Inspector of Police concerned was directed to give sufficient protection to the respondent. Aggrieved by the same, the petitioners preferred an appeal in Crl.A.No.32 of 2019 before the learned Principal Sessions Judge, Krishnagiri



and the same was dismissed. Challenging the said judgment, the petitioners have preferred the present revision case.

3. The learned counsel for the petitioners submitted that the first petitioner and the respondent led their life as husband and wife for a short span of time in a separate house and hence, there was no demand of dowry harassment by the petitioners at any point of time. The respondent voluntarily left the matrimonial home without any valid reason and subsequently, she re-married another person, who is her own uncle on 03.06.2020 and through him she had also begotten a child on 23.09.2021. He further submitted that the respondent filed a divorce petition and got an *ex-parte* order on 12.2.2021. Therefore, the respondent is not entitled to get any relief under the Domestic Violence Act. Both the Courts below failed to consider the conduct of the respondent and awarded maintenance to the respondent/wife. Further, the petitioners 2 and 3, who are the in-laws of the respondent, have nothing to do with the alleged allegations. Therefore, the judgment of the Courts below are liable to be set aside and the revision may be allowed.

4. The learned counsel for the respondent submitted that the



respondent/wife has obtained an *ex-parte* order of divorce. Challenging the said order, the first petitioner filed a petition to set aside the *ex-parte* order and the same is pending consideration. As on date, there was no conclusion regarding the divorce proceedings. Further, the petitioners have not produced any proof to substantiate the second marriage of the respondent and her adultery life. He further submitted that the first petitioner is having illegal relationship with another woman, while his first marriage is in subsistence with the respondent and he has also caused cruelty to the respondent. The petitioners 2 and 3 have demanded dowry from the respondent and hence, the respondent left the matrimonial home and is living separately. Therefore, she has filed the Domestic Violence Case against the petitioners and the Court below awarded maintenance and the same was confirmed by the lower appellate Court, which does not require any interference by this Court.

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

6. The marriage between the first petitioner and the respondent are not in dispute and both are living separately and the same is also not in dispute.



The main allegation against the first petitioner is that he sent messages to Kavitha on 05.04.2016 at about 21.53 hours and expressed his love for her and the same came to the knowledge of the respondent. When she questioned about the same, he warned her and caused cruelty to her and the petitioners 2 and 3 have demanded dowry from the respondent and that she left the matrimonial home. Subsequently, she obtained an *ex-parte* divorce order. The first petitioner filed the petition to set-aside the *ex-parte* order and the same is pending.

7. Per contra, the first petitioner alleged that the respondent re-married her own uncle on 03.06.2020 and had also begotten a child through her second husband on 23.09.2021. However, there is no proof to establish the factum of the second marriage of the respondent. Admittedly, the respondent had obtained *ex-parte* divorce. Challenging the same, the petitioner filed the petition to set aside the *ex-parte* order, which clearly shows that so far, the marriage between the first petitioner and the respondent was not legally dissolved. Further, the petitioners have produced a copy of the Birth Certificate of a female child, which clearly shows that the respondent had begotten a child through another person. The second marriage of the



respondent with another person was not proved, however, the respondent is in live-in-relationship with another person through whom, she had also begotten a child.

8. When the marriage of the respondent with the first petitioner is in subsistence, the respondent is leading a live-in-relationship life with another and through whom, she had also begotten a child and hence, she is not entitled to get maintenance for the birth of the child through second husband. However, she is entitled for maintenance from the date of filing of the Domestic Violence Case to the date of birth of her child.

9. Hence, the first petitioner is directed to pay a sum of Rs.10,000/- per month as maintenance from the date of filing of the Domestic Violence Case to the date of birth of the child i.e. 23.09.2021 and she is not entitled to get any other reliefs as granted by the trial Court.

10. Accordingly, this Criminal Revision Case is partly allowed by setting aside the order dated 19.11.2019 made in Crl.A.No.32 of 2019 by the learned the Principal Sessions Judge, Krishnagiri, confirming the order dated



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15.2.2019 made in D.V.No.3 of 2018 by the learned Judicial Magistrate, Uthangarai. Consequently, connected miscellaneous petitions are closed.

12.01.2023

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation Case : Yes/No
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To

- 1.The Principal Sessions Judge,
Krishnagiri.
- 2.The Judicial Magistrate,
Uthangarai.
- 3.The Section Officer,
Criminal Section,
High Court, Madras.



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P.VELMURUGAN, J.

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