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Crl.RC.No.871 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.RC.No.871 of 2018
and Crl.M.P.No.9942 of 2018

Govindharassou

...Petitioner

-Vs-

Kannagi

...Respondent

Prayer:- Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C, to call for the records in C.A.No.22 of 2017 on the file of the Court of II Additional Sessions Judge, Puducherry dated 28.04.2018 confirming the order of the learned Judicial Magistrate No.IV, Puducherry in Crl.MP.No.42 of 2017 in DVC.No.13 of 2016 dated 05.06.2017 awarding a sum of Rs.5000/- towards the rental house and set aside the same.

For Petitioner : Mr.M.Devaraj

For Respondent : Not ready in notice



ORDER

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The learned Counsel for the Revision Petitioner submits that this Criminal Revision case has been filed against the judgment passed by the learned II Additional Sessions Judge, Puducherry in Crl.A.No.22 of 2017 dated 28.04.2018.

2. It is the contention of the learned Counsel for the Revision Petitioner that the Petitioner is the Husband of the Respondent. The marriage between the Petitioner and the Respondent herein was solemnized on 28.06.1985 in Muthirapalayam, Puducherry. Subsequently, they moved to Ahmedabad and settled there. Out of wedlock, two children were born to them.

3. It is the contention of the learned Counsel for the Revision Petitioner that the Petitioner was driven out from Ahmedabad by the in-laws of the Petitioner. Therefore he came back to Puducherry. Subsequently, the Respondent came to Puducherry and stayed along with children in a rental house. She had given a complaint against the Revision Petitioner to the Hon'ble Lt Governor of Puducherry. The Lt Governor had



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forwarded the complaint given by the Respondent to the Puducherry Women's Commission. Subsequently, they had referred her to the Legal Service Authority. The Domestic Violence case No.13 of 2016 was filed before the learned Judicial Magistrate No.4, Puducherry. During the pendency of the Domestic Violence case, the Respondent had filed Crl.M.P.No.42 of 2017, in which, the interim maintenance of Rs.5,000/- was ordered. Aggrieved by the same, the Husband as Respondent in Crl.MP.No.42 of 2017 and the Respondent in Domestic Violence case No.13 of 2016 had filed Crl.A.No.22 of 2017 before the learned II Additional Sessions Judge, Puducherry. The learned Trial Judge dismissed the appeal confirming the order passed by the learned Judicial Magistrate No.4, Puducherry, against which, the present Criminal Revision Case is filed.

4. It is the contention of the learned Counsel for the Revision Petitioner that the Domestic Violence Case No.13 of 2016 itself is not maintainable as the parties resided as husband and wife only in Ahmedabad. The Domestic Violence case was enquired by the Protection Officer. The Protection Officer in Puducherry cannot go to Ahmedabad



and obtain details. Therefore, the order passed by the learned Judicial Magistrate No.4, Puducherry is to be set aside, as it is not at all maintainable. The order passed by the learned Judicial Magistrate No.4, Puducherry is perverse.

5. The learned Counsel for the Revision Petitioner invited the attention of this Court to the observation of the II Additional Sessions Judge, Puducherry in the judgment in Crl.A.No.22 of 2017 particularly in para – 9 of the judgment, stated as follows:

“9. There is no dispute regarding the relationship between the parties as husband and wife. The appellant claims that divorce has been obtained, but no documents filed to substantiate his claim. A perusal of records reveals that the petitioner who is wife of the respondent filed an application seeking interim maintenance in Cr.M.P.No.42 of 2017 in D.V.C. No.13/2016 and the learned Judicial Magistrate No.IV after perusing the material records ordered payment of Rs.5000/- by the respondent towards the rent for the residence of the petitioner (wife) by way of order dated 05.06.2017 and also directed the respondent herein to pay the maintenance on the 5th of every month. ...

6. On perusal of the judgment of the learned II Additional Sessions Judge, Puducherry it is found that the learned Judicial Magistrate No.4, Puducherry had arrived at a conclusion after service of notice on the



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respondent in Domestic Violence Act, the husband as respondent, had not filed counter. Even though, the learned Judicial Magistrate No.4, Puducherry has granted sufficient opportunity to the Respondent/Husband to engage a counsel to file his objections. For the reasons, best known to the respondent, he had remained silent and he had not taken any steps to file his objections. With regard to the capacity of the respondent to pay the maintenance amount is concerned, the learned II Additional Sessions Judge, Puducherry has observed in his order as follows:

“9..... On perusal of records it is evident, that the respondent appeared before the lower Court on 02.02.2017 after service of notice. From 02.02.2017 to 05.05.2017, the lower court has granted sufficient opportunity for the respondent to engage a counsel and to file his objections, but for the reasons best known to the respondent, he has remained silent and not taken steps to file his objections. With regard to the capacity of the respondent to pay the maintenance amount is concerned the appellant has not stated that he is not having any means. It is argued by the learned counsel for the appellant that after deduction the appellant is getting only meager amount and he is not in a position to pay the maintenance amount as ordered and therefore prayed for allowing this appeal. It is contended on the side of the petitioner that the respondent is having means and drawing a salary of Rs.20,000/- per month and also collecting rent of about Rs.20,000/- and therefore the argument advanced by the learned counsel for the appellant / respondent as not in a capacity to make the payment has no force. Considering the above said aspects,



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there is no reason to interfere with the well considered findings of the learned Judicial Magistrate No.IV, Puducherry and therefore the appellant / respondent is not entitled to the relief as prayed for and this point is answered accordingly”.

7. In the light of the observation made by the learned II Additional Sessions Judge, Puducherry, this Revision has to fail. The petitioner has not agitated his right in the Cr.MP.No.42 of 2017 before the learned Judicial Magistrate No.4, Puducherry. In the light of the specific observation made by the learned II Additional Sessions Judge, Puducherry, this Court is of the view that it is a well reasoned order and the same does not warrant any interference by this Court under the provisions of Revision. Hence, the Revision Petitioner is directed to agitate his right in the main case, in DVC. No.13 of 2016.

8. With the above observation, this Criminal Revision case is dismissed. Consequently, connected Miscellaneous Petition is closed.

11.08.2023

drl

Index : Yes/No

Speaking/Non-speaking order



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To

- 1.The Judicial Magistrate No.4, Puducherry.
2. The II Additional Sessions Judge, Puducherry,



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SATHI KUMAR SUKUMARA KURUP, J.,

drl

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