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CrI.R.C.No.1404 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA

KURUP

CrI.R.C.No.1404 of 2019

and

CrI.M.P.No.18337 of 2019

1.P.Vanathi

2.Minor G.Naren

Rep. by his Guardian

mother P.Vanathi

Both at M-85, Housing Unit

Membala Nagar

Kandayampatti

Salem - 636 005.

...Petitioners/Respondents/Petitioners

-Vs-

D.Ganesh

...Respondent/Appellant/Respondent

Prayer:- Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C, to call for records relating to the judgment made in CrI.A.No.88 of 2018 dated 06.03.2019 passed by the learned II Additional District and Sessions Judge, Salem, and set aside the same in respect of order of residential order reversing the judgment made in D.V.C.No.1 of 2017 dated 21.05.2018 by the learned Judicial Magistrate No.II, Salem.

For Petitioner : Mr.G.Pugazhenth

For Respondent : Mr.C.Venkatesan



Crl.R.C.No.1404 of 2019

Legal Aid Counsel

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ORDER

This Criminal Revision Case is filed to set aside the judgment passed in Crl.A.No.88 of 2018 on the file of the learned II Additional District and Sessions Judge, Salem, dated 06.03.2019.

2. Brief facts which are necessary for the disposal of this Criminal Revision Case are as follows:

- a) The 1st Petitioner/wife in D.V.C.No.1 of 2017 was married to the 1st Respondent in Domestic Violence Case on 24.10.2011. At that time, it was stated that the 1st Respondent was employed in Chennai. After marriage, they had to set up the matrimonial home in Chennai. After the marriage, the 1st Petitioner/wife came to know that her husband had lost his job. Therefore, the 1st Petitioner in D.V.C.No.1 of 2017 lived with the 1st Respondent along with his parents and brother, who are Respondents 2 to 4, residing in Suramangalam, Salem.
- b) After three months of marriage, there had been dispute between the husband and wife, wherein it is alleged by the wife that she was tortured by the Respondent herein as well as by her in-laws,



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including brother-in-law. Also, the Respondents in D.V.C.No.1 of 2017 are alleged to have driven her out from the matrimonial home, forcing her to go and reside with her parents at Salem.

- c) The 1st Petitioner had given a complaint to the All Women Police Station, which was referred to the Social Welfare Officer. The Social Welfare Officer had conducted enquiry and filed a report before the learned Judicial Magistrate No.II, Salem. Based on the report of the Social Welfare Officer, the learned Judicial Magistrate No.II, Salem, had conducted enquiry in D.V.C.No.1 of 2017, the husband and in-laws had filed counter denying the averments in the Domestic Violence Case.
- d) During the pendency of D.V.C.No.1 of 2017, the brother-in-law filed Crl.O.P.No.4522 of 2015 to quash the complaint against him. Therefore, as per the order in Crl.O.P.No.4522 of 2017 dated 20.09.2017 by the Hon'ble High Court, the name of the 4th Respondent was strike off from the D.V.C.No.1 of 2017.
- e) The 1st Petitioner/wife in D.V.C.No.1 of 2017 examined herself as P.W.1. Her parents were examined as P.W.2 and P.W.3 and independent witnesses were also examined on her side as P.W.4. On the side of the Respondents, the husband was examined as R.W.1,



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his father was examined as R.W.2 and an independent witness as

- f) On appreciation of evidence, the learned Judicial Magistrate No.II, Salem, by judgment dated 21.05.2018, ordered Rs.3,000/- as maintenance for the 1st Petitioner, Rs.2,000/- as maintenance for the minor son, and Rs.5,000/- towards rental charges for alternate accommodation. No compensation was ordered, even though the 1st Petitioner claimed compensation under Section 22 of the Domestic Violence Act. Aggrieved by the judgment of the learned Judicial Magistrate No.II, Salem, the Respondents preferred the Appeal before the learned II Additional District and Sessions Judge, Salem, in Crl.A.No.88 of 2018.
- g) After hearing the arguments of the learned Counsel for the Appellant as well as the Respondents, the learned II Additional District and Sessions Judge, Salem, by judgment dated 06.03.2019 had confirmed the judgment of the learned Judicial Magistrate No.II, Salem, in D.V.C.No.1 of 2017 dated 21.05.2018 but set aside the order of the learned Judicial Magistrate No.II, Salem, regarding alternate accommodation for payment of rent monthly Rs.5,000/- to the wife by the husband.



Crl.R.C.No.1404 of 2019

WEB COPY

h) Aggrieved by the judgment of the learned II Additional District and Sessions Judge, Salem, in Crl.A.No.88 of 2018 dated 06.03.2019, the wife had preferred this Criminal Revision Case.

3. Learned Counsel for the Revision Petitioners invited the attention of this Court to the judgment of the learned Judicial Magistrate No.II, Salem, in D.V.C.No.1 of 2017 dated 21.05.2018 and also to the judgment of the learned II Additional District and Sessions Judge, Salem, in Crl.A.No.88 of 2018 dated 06.03.2019.

4. It is the contention of the learned Counsel for the Revision Petitioners that the learned Judicial Magistrate No.II, Salem, had on proper appreciation of evidence, arrived at the conclusion that there was domestic violence committed by the husband and his parents against the wife. Therefore, the learned Trial Judge arrived at the conclusion that the husband has to pay maintenance Rs.3,000/- to the wife and Rs.2,000/- to the minor son and also to pay rental charges at the rate of Rs.5,000/- per month to the wife.

5. In the Appeal, the learned Counsel for the Revision Petitioners



invited the attention of this Court to the judgment of the learned II Additional District and Sessions Judge, Salem, in discussion from paras 15 to 18. The learned Counsel for the Revision Petitioners assails the judgment of the learned II Additional District and Sessions Judge, Salem, only with regard to para 17.

6. It is the contention of the learned Counsel for the Revision Petitioners that the reasoning of the learned II Additional District and Sessions Judge, Salem, rejecting the claim of rental charges for the wife on the ground that she had been living with her parents that cannot be a ground to set aside the order of the learned Judicial Magistrate No.II, Salem. It is further contention of the learned Counsel for the Revision Petitioners that any parent will provide food to the daughter or son. If the reasoning of the learned II Additional District and Sessions Judge, Salem, is to be accepted, the maintenance also has to be set aside. As a responsible husband, the 1st Respondent in D.V.C.No.1 of 2017 had failed to provide shelter and food to the wife and minor son.

7. It is the specific case of the learned Counsel for the Revision Petitioners that the 1st Petitioner/wife was driven out from the matrimonial



home in three months when she was pregnant. The learned Judicial

Magistrate No.II, Salem, had discussed those aspects from the evidence of the husband and father, who are examined as R.W.1 and R.W.2. In the light of those findings, the reasoning of the learned II Additional District and Sessions Judge, Salem, rejecting the claim of rental charges cannot be sustained. It is perverse and is to be set aside.

8. Learned Counsel for the Revision Petitioners also invited the attention of this Court to the observation of the learned II Additional District and Sessions Judge, Salem, that the wife had not preferred any cross-objection seeking compensation. In the light of those observations, the order granting rental charges also had to be restored.

9. Learned Counsel for the Respondent/husband vehemently objected to the line of argument of the learned Counsel for the Revision Petitioners stating that the wife had left the matrimonial home on her own volition, on the ground that the Respondents are residing in a village which has no modern amenities, whereas she was born and brought up in Salem. She wanted to appear for the Teachers Recruitment Board Examination. On that ground, she left the matrimonial home, she did not return to the



matrimonial home. Her father is a practicing Lawyer in Salem, and her mother is a Teacher. Therefore, she is not willing to go back to the matrimonial home. The finding of the learned Judicial Magistrate No.II, Salem, granting maintenance is perverse in the light of such facts, the finding of the learned II Additional District and Sessions Judge, Salem, confirming the judgment of the learned Judicial Magistrate No.II, Salem, is also to be set aside.

10. **Point for consideration:**

Whether the judgment of the learned II Additional District and Sessions Judge, Salem, in Crl.A.No.88 of 2018 dated 06.03.2019 is to be set aside as perverse?

11. Perused the finding of the learned Judicial Magistrate No.II, Salem, and finding of the learned II Additional District and Sessions Judge, Salem, and on perusal of the learned Judicial Magistrate No.II, Salem, it is found that the learned Judicial Magistrate No.II, Salem, had on proper appreciation of evidence arrived at the conclusion that there was domestic violence committed by the Respondents on the wife/1st Petitioner. Therefore, he had allowed the Petition granting maintenance of Rs.3,000/- per month to the 1st Petitioner/wife and Rs.2,000/- to the 2nd



Petitioner/minor son.

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12. In the Appeal, the learned II Additional District and Sessions Judge, Salem, had discussed the evidence before the learned Judicial Magistrate No.II, Salem, and had confirmed the judgment of the learned Judicial Magistrate No.II, Salem.

13. As rightly pointed out by the learned Counsel for the Revision Petitioners, the reasoning by the learned II Additional District and Sessions Judge, Salem, in para 17 is on the ground that the wife is residing with her parents. Therefore, alternate accommodation or accommodation in rental charges need not be granted, which is found perverse, as stated by the learned Counsel for the Revision Petitioners/wife. Any parent will provide food to the daughter when she is with them. If the logic of the learned II Additional District and Sessions Judge, Salem, is to be accepted, then maintenance also need not be granted.

14. The argument of the learned Counsel for the Respondent that the father of the Petitioner in D.V.C.No.1 of 2017 is a practicing Lawyer and



mother is a Teacher cannot be a ground to reject the maintenance. As a

husband, he has to provide maintenance to the wife, as stated by the 1st

Petitioner/wife in D.V.C.No.1 of 2017. Before marriage, the parents of the

husband had represented to the parents of the wife that their son is

employed in Chennai and has to set up matrimonial home in Chennai.

Immediately after the marriage, the wife was shocked to learn that her

husband had lost his job in Chennai and was forced to live in matrimonial

home where the husband as well as his parents, were alleged to have

abused her verbally and physically. The learned Judicial Magistrate No.II,

had on proper appreciation of evidence, arrived at the conclusion that he

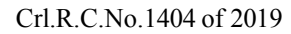
had been forcing the wife to be driven out by his in-laws. Therefore, the

submission of the learned Counsel for the Respondent/husband that the

wife went on her own volition is found unacceptable and the same is

rejected.

15. The reasoning of the learned II Additional District and Sessions Judge, Salem, rejecting the claim for rental charges is found perverse in the light of the fact that the wife was driven out from the matrimonial home. As pointed out by the learned Counsel for the Revision Petitioners if the logic of the learned II Additional District and Sessions Judge, Salem, is to be



16. In the light of the above finding, the learned II Additional District and Sessions Judge, Salem, in para 17 of the judgment alone is set aside, and the Criminal Revision Case stands allowed. The finding of the learned Judicial Magistrate No.II, Salem, is confirmed. Consequently, connected Criminal Miscellaneous Petition is closed.

cda
Index : Yes/No
Speaking/Non-speaking order

- 1.The II Additional District and Sessions Judge, Salem.
- 2.The Judicial Magistrate No.II, Salem.
- 3.The Section Officer, VR Records,
High Court, Chennai.



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Crl.R.C.No.1404 of 2019

SATHI KUMAR SUKUMARA KURUP, J.,

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Crl.R.C.No.1404 of 2019

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