



W.P.No.24026 of 2023 & C.R.P.No.2781 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 25.08.2023

PRONOUNCING ORDERS ON : 29.08.2023

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

W.P.No.24026 of 2023 & C.R.P.No.2781 of 2023

W.P.No.24026 of 2023

Dr.R.Ramkumar
S/o Mr.N.Ramdoss
E-304, Metro Zone
No.44, Pillayar Koil Street
Jawaharlal Nehru Street
Anna Nagar, Chennai – 600 040.

... Petitioner

..Vs..

1.The Inspector of Police
Thirumanagalam Police Station
Thirumangalam, Chennai 600 040.

2.Mrs.Roja
D/o.Edwin.T
No.81, Thamarai Street, Brindavanam Nagar
Chennai – 600 092.

3.Mr.Arun Pandian
S/o Mr.Thiraviam
No.42, Ponmari Nagar
Pandi Illam, Sathiyasay Road
Vengatasalapuram, Madurai South
Madurai – 625 011.

... Respondents

Prayer in W.P.No.24026/2023: Writ Petition under Article 226 of the Constitution of India seeking for the issuance of a Writ of Mandamus directing the 1st respondent to provide police protection to the petitioner and his minor son to reside in Flat No.E-304,



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Metro Zone, No.44, Pillayar Koil Street, Anna Nagar, Chennai 600 040 and to take action on the respondents 2 and 3 and their men from criminal trespass from damaging and disturbing the properties.

C.R.P.No.2781 of 2023

Dr.Ramadas Ramkumar
S/o Mr.Ramadas,
No.60, Sami Pandaram Street
Chintadripet, Chennai 600 002

... Petitioner

-Vs-

Mrs.Roja
D/o Edwin.T
No.81, Thamarai Street, Brindavanam Nagar
Chennai – 600 092.

... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the order dated 20.07.2023 in Crl.A.No.172 of 2022 on the file of the XIX Additional District Sessions Judge, Chennai.

In both cases

For Petitioner : Mr. Sarath Chandran
for M/s.E.Balamurugan

For Respondents : Mr.A.Gopinath, Government Advocate
(for R1 in W.P.No.24026 of 2023)
Mr.R.Y.George Williams
(for R2 in W.P.No.24026 of 2023) and
Respondent in C.R.P.No.2781 of 2023

COMMON ORDER

The issue involved in both these cases are inter connected and hence they are taken up together, heard and disposed of through this common order. The parties will be



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addressed in line with their rank in C.R.P.No.2781 of 2023.

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2. The respondent filed a petition / complaint before the Metropolitan Magistrate, Additional Mahila Court, Egmore, Chennai under Domestic Violence Act in D.V.C.No.122 of 2020 seeking for various reliefs against the petitioner. In this petition, Criminal M.P.No.765 of 2021 was filed seeking for residence order and to permit the respondent to live in the matrimonial house along with her son. This application was contested by the petitioner and the learned Metropolitan Magistrate by order dated 15.07.2022 allowed the petition for restraining the petitioner from dispossessing the respondent from the shared household till the disposal of the domestic violence case.

3. Aggrieved by the above order, the petitioner filed an appeal before the XIX Additional Sessions Judge, Chennai in Criminal Appeal No.172 of 2022 and the appellate Court, by order dated 20.07.2023 dismissed the appeal and issued the following directions:

- 1. The Appellant herein is directed to allow the Respondent herein in the presence of Protection Officer as well as the Police personnel of All Women Police Station, Thirumangalam as well as F-1, Chintadripet Police Station to take available documents, articles, case records and other belongings if any related to her from the shared house-hold at METRO ZONE, Flat No.E-304, Pillayar Koil Street, Anna Nagar, Chennai-40 as well as from the office at Door No.60, Sami Pandaram Street, Chintadripet, Chennai-02 and Palace Villa Apartment, R-79, Ground Floor, 'R' Block, Anna Nagar, Chennai-40.*



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2. *The Appellant herein is directed to handover the key of a Flat at METRO ZONE Apartments (other than the shared household) before the Trial Court which stands jointly in the name of Appellant and Respondent and in-turn the Respondent herein is at liberty to receive the same from the Trial Court.*
3. *The Protection Officer as well as the Inspector of All Women Police Station, Thirumangalam and the Inspector of Police, F-1 Chintadripet Police Station are directed under Sec.19(5) of the Act 2005 to provide necessary protection and assistance to the Respondent herein in implementing the order.*
4. *The Office is directed to forward the copy of this order with free of cost as per Sec.24 of Protection of Women from Domestic Violence Act, 2005 to the Protection Officer as well as the Inspector of Police, All Women Police Station, Thirumangalam and the Inspector of Police, F-1, Chintadripet Police Station for assistance in due implementation of this order.*
5. *The copy of this order may be furnished to both parties with free of cost as per Sec.24 of the Act 2005."*

4. Aggrieved by the above order, C.R.P.No.2781 of 2023 has been filed by the petitioner. The petitioner has also filed W.P.No.24026 of 2023 seeking for police protection from the Inspector of Police, Thirumangalam Police Station in order to enable the petitioner and his minor son to reside in the property in Flat E-304, METRO ZONE, No.44, Pillayar Koil Street, Anna Nagar, Chennai-600 040 and to take action against the respondent and another for having trespassed into the property and damaging the same.



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5. Heard Mr.Sarath Chandran, learned counsel for the petitioner, Mr.A.Gopinath, learned Government Advocate for the first respondent in the writ petition and Mr.R.Y.George Williams, learned counsel for the respondent in the CRP / second respondent in the writ petition.

6. This Court has carefully considered the submissions made on either side and the materials available on record. The petitioner is a qualified doctor and he was married to the respondent on 14.02.2007. A son was born on 23.07.2009 and he was named as Rajesh. There was a matrimonial dispute between the petitioner and the respondent and it is stated that the respondent picked up a quarrel with the petitioner during November 2020 and left the matrimonial home along with the son. The petitioner filed a petition before the Family Court for dissolution of the marriage and the same is pending before the III Additional Family Court, Chennai in O.P.No.795 of 2021. The respondent also initiated proceedings under the Domestic Violence Act.

7. In the meantime, the petitioner came to know that the respondent started living with another person under the same roof along with the son and it came to light that the respondent was physically abusing the son. The petitioner was also not allowed to meet the son. Hence, the petitioner approached the Child Welfare Committee (hereinafter referred to as 'CWC') Kancheepuram and an enquiry was conducted and it came to light that the son was subjected to sexual harrassment by the respondent and the person with whom she started living. On the directions of the CWC, custody of the son was given to



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the petitioner from 19.07.2022. Based on the complaint given by the CWC, the All Women Police Station, Tambaram registered an F.I.R., in Crime No.33 of 2022 on 15.08.2022 against the respondent and the alleged paramour for offences under Section 8 read with 7, Section 12 read with 11(1) and Section 17 read with 16 of the POCSO Act and Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000. Investigation is pending in this case. Interestingly, the petitioner approached this Court and filed Crl.O.P.No.15771 of 2023 seeking for transfer of investigation on not being satisfied with the investigation conducted. At that point of time, this Court had an occasion to go through the Section 164 statement recorded from the boy and found the contents therein to be very serious. Hence, by an order dated 14.07.2023, this Court directed the concerned police to conduct an effective investigation and proceed further in accordance with law. It is brought to the notice of this Court that the investigation is going on in an effective manner.

8. The respondent filed an interim application in D.V.C.No.122 of 2020. The respondent claimed that she is also a joint owner of the flat and that she must be permitted to stay in the property and that she has been illegally kept away from the matrimonial home. The petitioner took a very specific stand that the respondent is living with one Mr.Arun Pandian and that the property was purchased only from his earnings and already divorce proceedings have been initiated on the ground of adultery. The trial Court considering the rival claims, renders a specific finding that there are no prima facie materials disclosing that the petitioner had committed any domestic violence against the



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respondent. The trial Court also records the finding that the respondent has withdrawn money from various bank accounts of the petitioner and this was based on the records that were placed before the Court. In spite of rendering such a finding, the trial Court passed an order restraining the petitioner from dispossessing the respondent from the shared household. This direction was given in spite of the specific stand taken by the respondent that she is not living in the matrimonial home.

9. The appellate Court takes note of the fact that there is a POCSO case pending against the respondent and her alleged paramour and hence renders a finding that the respondent cannot be allowed to stay with her son in the shared household. The appellate Court also holds that the respondent should not be allowed to stay in the shared household considering the facts of the case. In spite of rendering such a finding, the appellate Court ultimately directs the concerned police to help the respondent from taking the available documents, articles etc., and further directs the keys of Flat No.E-304 to be surrendered to the trial Court. It is not known as to why the appellate Court gave such a direction and there is absolutely no reason as to why the petitioner and his son should not be allowed to reside in Flat No.E-304. Just because the appellate Court found that the respondent cannot be allowed to stay in the shared household, that will not result in the petitioner also being deprived of staying in the flat with his son. Such a direction given by the appellate Court is on the face of it illegal.

10. This appeal became the subject matter of challenge in the present



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C.R.P.No.2781 of 2023 and this Court granted an order of interim stay on 31.07.2023.

One day prior to that, the respondent has managed to break open the lock and enter into the flat. As a result of this illegal act committed by the respondent, the petitioner and his son are now forced to stay in a hotel.

11. The order passed by the trial Court is full of contradictions. If the trial Court is not able to find any prima facie material to establish domestic violence, there is no question of granting an interim relief in favour of the respondent. The trial Court also gave a finding that the respondent has withdrawn large amounts of money from the various bank accounts maintained by the petitioner.

12. The appellate Court found that the respondent does not deserve to be granted the relief of shared household going by her conduct and the appellate Court also found that she is having several properties in her name. If that is the case, the appeal ought to have been allowed and there is no reason as to why the keys belonging to Flat No.E-304 must be surrendered before the trial Court. Thus, the orders passed by the trial Court and also the appellate Court suffer from patent illegalities and the same are liable to be interfered by this Court and accordingly both the orders are set aside.

13. In the light of the above findings, the petitioner is entitled to stay along with his son in Flat No.E-304, METRO ZONE, No.44, Pillayar Koil Street, Anna Nagar, Chennai-600 040. The respondent is not entitled to stay in this flat because of her conduct and



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also the pending criminal case wherein serious allegations have been made by the boy against the respondent and her alleged paramour. Therefore, the respondent has to necessarily vacate the flat forthwith. The main domestic violence case can be agitated by the parties on its own merits and in accordance with law. These findings rendered, will confine itself to the interim relief sought for by the respondent. Accordingly, C.R.P.No.2781 of 2023 stands allowed. No costs.

14. In the light of the above order, there shall be a direction to the Inspector of Police, Thirumangalam Police Station to provide police protection to the petitioner and his son and to ensure that the respondent vacates the property as directed supra without causing any law and order problem. The writ petition is disposed of with the above direction. No costs.

29.08.2023

Index : Yes/No
Internet : Yes/No
KST

To

The Inspector of Police
Thirumanagalam Police Station
Thirumangalam, Chennai 600 040.



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N.ANAND VENKATESH,J.
KST

Pre-Delivery Judgment in
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