



Crl.R.C.Nos.839 & 843 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 11.08.2023

Delivered on 21.12.2023

CORAM:

The Honourable MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.R.C.Nos.839 & 843 of 2019

Crl.R.C.No.839 of 2019

D.Rathinavelu

...Petitioner/1st Respondent/
1st Respondent

-Vs-

1.Kamala
2.Sarala

...Respondent/Appellant/Petitioner
...Respondent/2nd Respondent/
2nd Respondent

Crl.R.C.No.843 of 2019

D.Rathinavelu

...Petitioner/Appellant/
1st Respondent

-Vs-

1.Kamala
2.Sarala

...Respondent/Respondent/Petitioner
...Respondent/Respondent/
2nd Respondent



Crl.R.C.Nos.839 & 843 of 2019

Prayer in Crl.R.C.No.839 of 2019:- Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code, 1973, calling for the records in C.A.No.86 of 2018 on the file of the Court of the learned I Additional District Judge, Salem, dated 12.04.2019 modifying the order of the learned Judicial Magistrate Additional Mahila Court, Salem, in D.V.O.P.No.18 of 2015 dated 28.02.2018 and set aside the same.

Prayer in Crl.R.C.No.843 of 2019:- Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code, 1973, calling for the records in C.A.No.52 of 2018 on the file of the Court of the learned I Additional District Judge, Salem, dated 12.04.2019 confirming the order of the learned Judicial Magistrate Additional Mahila Court, Salem, in D.V.O.P.No.18 of 2015 dated 28.02.2018 and set aside the same.

Crl.R.C.Nos.839 & 843 of 2019

For Petitioner : Mr.M.Devaraj
For Respondents : M/s.D.Jeevitha
for Mr.R.Nalliyappan

ORDER

These Criminal Revision Cases are filed by the 1st Respondent herein in D.V.O.P.18 of 2015 on the file of the learned Judicial Magistrate, Additional Mahila Court, Salem, seeking maintenance.



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

- a) The Appellant in C.A.No.86 of 2018 filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 alleging that the marriage between the Petitioner/wife and the 1st Respondent/husband was solemnized on 25.04.1983 and subjected to cruelty and harassment. The Petitioner/wife was thrown out of the matrimonial home in 1985 along with her daughter named Revathi. The 1st Respondent/husband had married Sarala and had three sons, but the Petitioner/wife was subjected to mental and physical torture.
- b) The Petitioner/wife filed a maintenance case against the 1st Respondent, which was ordered at Rs.2,215/- by order dated 21.01.2003. Even after filing the recovery maintenance Petition, the 1st Respondent had not paid the amount properly. The Petitioner/wife had educated her daughter and also solemnized the marriage for her. The 1st Respondent/husband has not given any money for the said expenses. The Petitioner was neglected and subjected to harassment right from the year 1985, and she prayed for



monthly maintenance and also compensation.

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- c) The 1st Respondent/husband denied the allegations and claimed that the matrimonial relationship seized in 1984. Therefore, the 1st Respondent opposed the Petition.
- d) The Trial Court examined three witnesses and 11 documents, and The learned Judicial Magistrate, Additional Mahila Court, Salem, passed a judgment stating that the Respondents 1 and 2 committed Domestic Violence on the Petitioner/wife. The 1st Respondent is liable to pay Rs.2,000/- as monthly maintenance and Rs.5,00,000/- as compensation.
- e) Aggrieved by the same, the 1st Respondent/husband in D.V.O.P.18 of 2015 had filed Criminal Appeal No.52 of 2018 on the file of the learned I Additional District Judge, Salem. The Petitioner/wife in D.V.O.P.18 of 2015 had filed Criminal Appeal No.86 of 2018 on the file of the learned I Additional District Judge, Salem, against the order of the learned Judicial Magistrate, Additional Mahila Court, Salem, in D.V.O.P.18 of 2015 dated 28.02.2018.
- f) As per the judgment dated 12.04.2019, the learned I Additional



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District Judge, Salem, had allowed the Appeal filed by the wife in Criminal Appeal No.86 of 2018 and dismissed the Appeal filed by the husband in Criminal Appeal No.52 of 2018. The amount ordered by the learned Judicial Magistrate Additional Mahila Court, Salem, in D.V.O.P.No.18 of 2015 ordering maintenance of Rs.2,000/- per month was enhanced to Rs.5,000/- per month.

g) Aggrieved by the judgment passed by the learned I Additional District Judge, Salem, the husband had filed these Criminal Revision Cases.

4. Learned Counsel for the Revision Petitioner/husband submits that the date of marriage was 25.04.1983. After one or two months, after the marriage, there was dispute between the husband and the wife. Therefore, she herself has withdrawn from the matrimonial relationship and she has started living separately. There is no domestic relationship to attract the provisions of the Domestic Violence Act. Already, she had filed Maintenance Case and maintenance was ordered. According to which the husband had been paying maintenance till date. After so many years, she had filed D.V.O.P.No.18 of 2015, which is not at all maintainable under



the Limitation Act.

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5. In D.V.O.P.18 of 2015, there was no report from the Protection Officer. Therefore, the order passed by the learned Judicial Magistrate, Additional Mahila Court, Salem, is perverse. When he had raised the grounds in the Appeal, the learned I Additional District Judge, Salem, rejected the contention of the husband. Therefore, he has come before this Court by filing these Civil Revision Cases and he seeks to set aside the order passed by the learned Judicial Magistrate, Additional Mahila Court, Salem.

6. It is his submission that the 1st Respondent in these Criminal Revision Cases is not entitled to any relief as per the Domestic Violence Act. She herself has withdrawn from the matrimonial relationship and living separately.

7. Learned Counsel for the Revision Petitioner invited the attention of this Court to the observation by the learned Judicial Magistrate Additional Mahila Court, Salem, in the order regarding the averments in



the D.V.O.P case that the 2nd Respondent in the D.V.O.P had attacked the Petitioner in the D.V.O.P, blaming that the Petitioner has one daughter. Whereas the 2nd Respondent in the D.V.O.P has three sons through the 1st Respondent, who is alleged to have pulled the Petitioner out of the house. This fact had not been provided with specific date and time. Therefore, the learned Judicial Magistrate, Additional Mahila Court, Salem, rejected the contention. The learned Judicial Magistrate Additional Mahila Court, Salem, had passed orders favoring the Petitioner in the light of the evidence available before the Court.

8. The fact that the 1st Respondent had cohabited with the 2nd Respondent, through whom they had three children, had been accepted by the learned Judicial Magistrate, Additional Mahila Court, Salem. Therefore, the submission of learned Counsel for 1st Respondent in the D.V.O.P regarding domestic violence itself is found unacceptable by the Judicial Magistrate, Additional Mahila Court, Salem. While so, the order granting Rs.2,000/- per month is perverse. Therefore, he seeks to set aside the order of the learned Judicial Magistrate Additional Mahila Court, Salem, which was modified by the Learned I Additional District Judge,



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Salem, as it is not maintainable as per the provisions of the Limitation Act.

9. Learned Counsel for the Respondents herein submitted that the Revision Petitioner had contracted second marriage, which had caused domestic violence. Therefore, the order passed by the learned I Additional District Judge, Salem, is to be confirmed and these Criminal Revision Cases have to be dismissed.

10. Learned counsel for the Respondents invited the attention of this Court to the observation of the Learned I Additional District Judge, Salem, in Page No.8 in the concluding part of the judgment. For the reason of raising the amount of the maintenance order passed by the learned Judicial Magistrate Additional Mahila Court, Salem.

11. Learned Counsel for the Revision Petitioner also seeks to set aside the amount ordered by the learned Judicial Magistrate, Additional Mahila Court, Salem, ordering compensation.

12. **Point for consideration:**

Whether these Revision Cases are to be



allowed and the order passed by the learned Judicial Magistrate, Additional Mahila Court, Salem, in D.V.O.P. 18 of 2015, dated 28.02.2018 and modified by the learned I Additional District Judge, Salem, in Crl.A.No.86 of 2018 and dismissing Crl.A.No.52 of 2018 is to be set aside?

13. The contention of the Petitioner that the 1st Respondent did not co-habit with the Revision Petitioner. After about one month of marriage, she on herself left the matrimonial home of the Petitioner/husband cannot be accepted in the light of the finding given by the learned Judicial Magistrate, Additional Mahila Court, Salem. It is true that the Respondent before the Judicial Magistrate, Additional Mahila Court, Salem, Revision Petitioner herein, husband had cohabited with the 2nd Respondent and through the relationship gave birth to three sons. Till date, the Petitioner in the domestic violence case and the 1st Respondent in these Revision Cases had filed domestic violence cases, the Revision Petitioner herein as husband had not obtained any decree of divorce against the 1st Respondent in these Criminal Revision Cases.

14. During the subsistence of the 1st marriage with the 1st Respondent in these Revision Cases, the Revision Petitioner herein had cohabited with the 2nd Respondent, resulting in giving birth to three



children/three sons, which itself gives the presumption that the 1st Respondent was prevented from entering the matrimonial home by the Revision Petitioner, his parents and his siblings. Therefore, the observation by the learned Judicial Magistrate, Additional Mahila Court, Salem, that the conduct of the husband/1st Respondent in the domestic violence case in driving her out and co-habiting with the 2nd Respondent in the domestic violence case itself caused mental and physical torture to the Petitioner in the domestic violence case cannot be rejected as unreasonable.

15. The husband as Respondent in the domestic violence case, had not stated that he had contracted a marriage with the 2nd Respondent. He admits that the cohabitation children were born to the 2nd Respondent. He claims that he developed relationships with the 2nd Respondent, who was appointed to look after his aged and sick mother, in the absence of the specific statement by the Revision Petitioner as Respondent in the domestic violence case that he had divorced the Petitioner in the domestic violence case and there is no cohabitation directing domestic violence case. The contention of the learned Counsel for the Revision Petitioner cannot at all be accepted as a woman not having sufficient education and



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who was born and brought up in a rural background. She can only seek maintenance as proof of her claim that she is still the wife of the Revision Petitioner.

16. This Revision Petitioner as husband did not make any allegations against the 1st Respondent in these Criminal Revision Cases against his wife. Therefore, the contention of the learned Counsel for the Revision Petitioner that she had left the matrimonial home on her own had been living separately cannot at all be accepted in the light of the fact that the husband had not severed the relationship with the 1st Respondent, the Petitioner in the D.V.O.P case. When the 1st marriage is subsisting, he has developed a relationship with another woman through whom he had three children, which itself caused mental and physical torture on the Petitioner in the domestic violence case. This cannot at all be rejected in the absence of specific contention by the Revision Petitioner/husband as Respondent in the Domestic Violence Case.

17. Therefore, the submission of the learned Counsel for the



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Revision Petitioner has to be rejected in the light of the evidence available before the learned Judicial Magistrate, Additional Mahila Court, Salem, and in the light of the order of the learned Judicial Magistrate, Additional Mahila Court, Salem, confirmed by the learned I Additional District Judge, Salem, in Crl.A.No.86 of 2018 is found justified. This Revision Petition has no merit and hence dismissed. This Court cannot appreciate evidence in the trial as a Revision Court. This is not an Appeal to discuss the entire evidence to re-assess the entire evidence. Only if there is any ground in Appeal, this Court can exercise its power. The contention of the learned Counsel for the Revision Petitioner that the judgment of the learned I Additional District Judge, Salem, not modifying the compensation in the Domestic Violence Act is rejected. The order passed by the learned Judicial Magistrate, Additional Mahila Court, Salem, in D.V.O.P. 18 of 2015, dated 28.02.2018 and modified by the learned I Additional District Judge, Salem, in Crl.A.No.86 of 2018 and dismissing Crl.A.No.52 of 2018 are found reasonable. It does not warrant any interference by this Court exercising power of Revision. Therefore, the point for consideration is answered in favour of the Respondent and against the Revision Petitioner.



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18. In the result, these Criminal Revision Cases stand dismissed.

The order passed by the learned Judicial Magistrate, Additional Mahila Court, Salem, in D.V.O.P. 18 of 2015, dated 28.02.2018 and modified by the learned I Additional District Judge, Salem, in Crl.A.No.86 of 2018 and dismissing Crl.A.No.52 of 2018 are hereby confirmed.

21.12.2023

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Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No

To

- 1.The Judicial Magistrate Additional Mahila Court, Salem.
- 2.The I Additional Sessions Judge, Salem.
- 3.The Section Officer, VR Records,
High Court, Chennai.

SATHI KUMAR SUKUMARA KURUP, J.,



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**Order made in
Crl.R.C.Nos.839 & 843 of 2019**

21.12.2023