



Crl.R.C.No.995 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.02.2023

PRONOUNCED ON : 01 .03.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.995 of 2021
and
Crl.M.P.No.13231 of 2021

1. N. Venkatachlam

2. V. Mallika

... Petitioners

Vs.

Natchal

... Respondent

PRAYER : Criminal Revision Case filed under Section 397 r/w.407 of Cr.P.C. to set-aside the order dated 12.11.2021 passed in CMP No.3358 of 2021 in C.A.No.176 of 2021 by the learned Principal District and Sessions Judge, Coimbatore.



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For Petitioners : Mr.J. Chandran Sundar Sashikumar
for M/s.S.Sithirai Anandam

For Respondent : M/s.Udaya P.S.Menon

ORDER

Challenging the order passed by the learned Principal District and Sessions Judge, Coimbatore in Crl.M.P.No.3358 of 2021 in C.A.No.176 of 2021, dated 12.11.2021, the present revision has been filed.

2. The respondent herein is the complainant in D.V.A.No.150 of 2019 on the file of the Judicial Magistrate No.II, Coimbatore. The marriage between the respondent/complainant and one V.Chokalingam, who is the son of the petitioners/respondents took place on 14.11.2018. Due to misunderstanding, dispute arose between them and the respondent/complainant filed a petition in D.V.A.No.150 of 2019 under Section 12 of Protection of Women from Domestic Violence Act 2005 on 29.07.2019 before the Judicial Magistrate No.II , Coimbatore against her



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husband and the petitioners herein, who are father-in-law and mother-in-law. The learned Trial Judge, after recording the statement of the respondent/complainant and considering the allegations, found that there is no prima facie case for taking cognizance against the petitioners/father-in-law and mother-in-law, had taken cognizance only against the husband/Chokalingam in D.V.A. No. 150 of 2019 on 06.08.2019. Aggrieved over the same, the respondent/complainant preferred an appeal before the District and Sessions Judge, Coimbatore with the delay of 707 days and filed a petition in Crl.M.P.No.3358 of 2021 to condone the delay of 707 days. The learned Principal and District Judge, Coimbatore, after considering the submission, condoned the delay on payment of cost of Rs.5000/-. Against which, the present Criminal Revision has been filed.

3. The learned counsel for the petitioners submitted that the delay of 707 days in filing the appeal, against the non cognizance of case against the petitioners/father-in-law and mother-in-law, is not explained by the respondent/complainant before the Lower Appellate Court. Further the



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alleged reason that the respondent/complainant is not having knowledge of non cognizance against the petitioners is not true. Further the contention of the respondent/complainant for condoning the delay that her husband approached this Court to quash the criminal proceedings in Crl.O.P.No.16389 of 2020 and got stay and further, she filed proof affidavit on 05.03.2021 before the Magistrate Court and not able to get certified copy of non speaking order of the Judicial Magistrate due to Covid-19 lockdown, are not acceptable. Everyday of delay has to be explained , but the respondent/complainant failed to explain the delay. The Lower Appellate Court, in the impugned order, without considering the non-explanation of everyday of delay, allowed the petition on payment of cost of Rs.5000/- , which is unsustainable and reiterated the other grounds raised in the ground of appeal. Thus, pleaded to set aside the impugned order and allow the revision.



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4. The learned counsel appearing for the respondent/complainant supported the order of the Principal District and Sessions Judge, Coimbatore and further contended that the quash petition filed by the husband before this Court in Crl.O.P.No.16389 of 2020 was dismissed on 18.01.2021. Thereafter, she filed a proof affidavit on 05.03.2021 and then only she came to know about the non cognizance of the offence against the father in law and mother in law. Therefore, she filed the petition to condone the delay of 707 days and the same is rightly considered by the principal District and Sessions Judge and there is no ground to interfere with the said order and the respondent/complainant has also paid the cost imposed on her. Thus, pleaded to dismiss the revision.

5. I have considered the matter in the light of the submissions made by the learned counsel for the parties and perused the materials available on record.



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6. The respondent/complainant is the wife and the petitioners herein are father in law and mother in law of the respondent herein. On 14.11.2018, the respondent/complainant married Chockalingam, who is the son of the petitioners herein. The petitioners are shown as respondents 2 and 3 in the complaint filed under Section 12 of Protection of Women from Domestic Violence Act 2005 before the Judicial Magistrate No.II, Coimbatore and the learned Judicial Magistrate, has taken cognizance in DVA No.150 of 2019 on 06.08.2019 as against the husband alone as there is no prima facie ground and allegations in the complaint against the petitioners/father in law and mother in law. Further, the husband filed Crl.O.P.No.16389 of 2020 before this Court for quashing the above said Criminal Proceeding, which was dismissed by this Court on 18.01.2021. In that Criminal Original Petition, the respondent/complainant appeared and this Court, while dismissing the Criminal Original Petition No.16389 of 2020 directed the Trial Court to dispose the case within a period of three months. Thereafter, the respondent/complainant filed proof affidavit on 05.03.2021. The abovesaid fact is not in dispute. The contention of the



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respondent/complainant that only on 05/03/2021, she came to know about the non cognizance of the complaint against the petitioners/father in law and mother in law, is unbelievable. Her version is not credible and believable one. She ought to have explain the day to day delay. But, the reason for delay given by the respondent/complainant is not acceptable one. The proof of sufficient cause is a condition precedent for exercising the discretionary jurisdiction. [*AIR 1962 SC 361(Ramlal, Motilal and Chhotelal Vs./ Rewa Coalfields Ltd.)*]. Considering the above facts and circumstances, I find no bonafide in the petition for condoning the delay of 707 days. Further, the ignorance of non cognizance is also not acceptable one. Therefore, the order of the learned Principal District and Sessions Judge, Coimbatore, in condoning the delay is unsustainable and not supported by sufficient reason and the same is liable to be set aside.



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7. Accordingly, this Criminal Revision is allowed and the order passed by the Principal District and Sessions Judge in Crl.M.P.No.3358 of 2021 on 12.11.2021 is hereby set-aside.

01.03.2023

mrp

To

1. The Principal District and Sessions Judge,
Principal District and Sessions Court,
Coimbatore.
2. The Judicial Magistrate No.II,
Coimbatore.



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V.SIVAGNANAM, J.,

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Pre-delivery order

in

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