



C.R.P(MD)No.649 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2023

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.649 of 2023

and

C.M.P(MD)No.3009 of 2023

Iruthaya Sheepa

...Petitioner

Vs.

Pradeev

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the entire records pertaining to the petition filed by the respondent in CrI.M.P.No.8838 of 2019 in M.C.No. 136 of 2014 on the file of learned Judicial Magistrate No.1, Thoothukudi and strike off the same.

For Petitioner : Mr.A.Robinson

ORDER

The petitioner herein has initiated DVC proceedings against the respondent and in-laws in M.C.No.136 of 2014. The respondent had remained absent and was therefore set *ex parte* and an order came to be passed on 01.11.2017 whereby, the respondent herein was directed to pay a sum of Rs.15,000/- towards maintenance and Rs.15,00,000/-



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towards compensation. Meanwhile, during the interregnum, the respondent has also initiated proceedings to divorce the petitioner in I.D.O.P.No.171 of 2017 before the District Court, Thoothukudi to dissolve the marriage. After the *ex parte* order was passed on 01.11.2017 in M.C.No.136 of 2014 by the Judicial Magistrate - I, Thoothukudi, the respondent has also filed CrI.M.P.No.1569 of 2019 to condone the delay of 406 days in filing the appeal. The said application was dismissed by the Principal Sessions Court, Thoothukudi vide order dated 04.03.2020. Thereafter, the respondent has initiated the impugned proceedings purportedly under Section 5 (2) of the Protection of Women from Domestic Violence Act, 2005.

2. The reasons stated in the petition appears to be that on account of the *ex parte* decree passed on 01.11.2017, the respondent has suffered a lot and lost the job and is searching for a new job and that he is presently depending upon his family members for his survival. The petitioner had therefore filed an application stating that the order passed on 01.11.2017 was not complied and the attempt to file an appeal was also dismissed by the Principal Sessions Court, Thoothukudi in CrI.M.P.No.1569 of 2019 and that attempt under Section 25 (2) of the Act was nothing but a delay in payment of compensation. The petitioner



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has a remedy to defend herself before the Judicial Magistrate No.1, Thoothukudi before whom Cr.M.P.No.5046 of 2019 has been filed by the respondent under Section 25 (2) of the Prevention of D.V. Act.

3. Considering the fact that the attempt of the respondent to file the appeal was dismissed by the Court on 04.03.2020, the learned Judicial Magistrate - I is directed to take up further proceedings in Cr.M.P.No. 5046 of 2019 subject to the respondent depositing 50% of the arrears of the amount due as determined vide order, dated 01.11.2017 in M.C.No. 136 of 2014. Subject to the aforesaid condition being complied by the respondent, the learned Judicial Magistrate No.1 shall proceed and pass orders in Cr.M.P.No.5046 of 2019 by giving an opportunity to the petitioner herein to file a counter.

4. The present Civil Revision Petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

13.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

WEB COPY

1. The Judicial Magistrate No.1,
Thoothukudi
2. The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



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C.SARAVANAN,J.

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