



Crl.RC.(MD).Nos. 279 and 443 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on: 12.09.2023

Pronounced on: 20.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Criminal Revision Case (MD). Nos. 279 & 443 of 2021

and

Crl. M.P. (MD). No. 2780 of 2021

Crl.RC.(MD) No.279 of 2021

B. Somasundaram

.. Petitioner

Versus

Tamilmozhi

.. Respondent

Criminal Revision Case is filed under Section 397 & 401 of Cr.P.C., to call for the records relating to the judgment dated 11.1.2021 made in CA. No. 40 of 2019 on the file of learned I Additional District & Sessions Judge (P.C.R) Thanjavur, confirming the order dated 20.11.2018 made in DVC. No. 41 of 2012 on the file of Judicial Magistrate No. II, Thanjavur, in so far as directing the petitioner to pay a monthly maintenance of Rs.5000/- pm., to the respondent herein and to set aside the same.

For Petitioner	:	Mr. P. Vadivel
For Respondent	:	Mr. G. Karnan



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Tamilmozhi

.. Petitioner

Versus

1.B.Somasundaram
2.Balasubramanian
3.Sivagami
4.Ravi
5.Tharamambal

.. Respondents

Criminal Revision Case is filed under Section 397 & 401 of Cr.P.C., to call for the records pertaining to the C.A.No.11 of 2019 on the file of the 1st Additional District and Sessions Judge, (P.C.R), Thanjavur, dated 11.01.2021 dismissing the appeal by confirming the order passed in D.V.C. No. 41 of 2012 on the file of the Judicial Magistrate No. II, Thanjavur dated 20.11.2018.

For Petitioner : Mr. G. Karnan
For Respondents : Mr. P. Vadivel

COMMON ORDER

The Criminal Revision Case in Crl.RC. (MD) No. 279 of 2021 has been filed to call for the records relating to the judgment dated 11.1.2021 made in CA. No. 40 of 2019 on the file of learned I Additional District & Sessions Judge (P.C.R) Thanjavur, confirming the order dated 20.11.2018 made in DVC. No. 41 of 2012 on the file of Judicial Magistrate No.II, Thanjavur, in so far as it directs the petitioner to pay a monthly maintenance of Rs.5000/- pm.,

<https://www.mhc.trt.gov.in/judicial> to the respondent herein.



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2. The Criminal Revision Petition in Crl. RC. (MD).No. 443 of 2021 has been filed to call for the records pertaining to the C.A. No. 11 of 2019 on the file of the 1st Additional District and Sessions Judge, (P.C.R), Thanjavur, dated 11.01.2021, dismissing the appeal by confirming the order passed in D.V.C. No. 41 of 2012 on the file of the Judicial Magistrate No.II, Thanjavur dated 20.11.2018.

3. Before the trial Court, the wife i.e., the petitioner in Crl.RC. (MD).No.443 of 2021 and respondent in Crl.RC.(MD).No.279 of 2021 has filed DVC. No. 41 of 2012 as against her husband seeking for the relief of maintenance, to return back the household articles mentioned therein and for damages. She also prayed for injunction against 4th and 5th respondents to restrain them from using abusive words over phone.

4. The trial Court, after appearance of the respondents therein furnished the copies and thereafter, they filed their counter. During trial, on the side of petitioner in the D.V.C. No. 41 of 2012 the wife examined herself as P.W.1 and five other witnesses were also examined as PWs 2 to 6 and marked Ex.P1 to P6. On the side of the respondent/husband R.W.1 to R.W.4 were examined but no documents were marked. After analysing the evidences



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and documents adduced on both sides, the learned Magistrate dismissed the Domestic Violence Case in so far as it relates to the relief of return of gold ornaments, damages and injunction to restrain the respondents 4 and 5 therein from using abusive language against the wife through cell phone but allowed the prayer for maintenance and directed the first respondent therein to pay a sum of Rs.5,000/- towards her maintenance.

4.1 As against the awarding of maintenance, the husband has preferred Criminal Appeal in C.A. No. 40 of 2019 and the unsuccessful wife, in respect of other prayers i.e., for return of articles, compensation and injunction, has preferred the Appeal in C.A.No.11 of 2019 before the I Additional District Judge (PCR), Thanjavur. After hearing both sides, the Appellate Court has dismissed both the appeals and confirmed the order of trial Court.

4.2 As against the judgement of the appellate Court, the wife/appellant in Crl.A. No. 11 of 2019, has preferred the revision in Crl.R.C. (MD). No. 443 of 2021 and the husband/appellant in C.A. No. 40 of 2019, has preferred the revision in Crl. RC. (MD). No.279 of 2021.



5. The grounds raised in Crl.R.C. No. 443 of 2021 are as follows:-

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The Courts below have erroneously dismissed the claim of the petitioner towards compensation pertaining to the jewels belonging to her and failed to consider the provisions of the sections 28, 32 of D.V.C. Act r/w. 15(6) of Rules and section 468 of Cr.P.C in the proper perspective. According to him, the Courts below erroneously considered the judgment in Inderjit Singh Grewel Vs. State of Punjab and another (2011) 12 SCC 588, and held that the complaint is barred by limitation which is legally not sustainable. The Courts below also erroneously considered the judgment of Krishna Bhattacharjee Vs. Saratjo Choudhury and another (2016) 2 SCC 705, and held that the initiation of Domestic Violence case is barred by limitation. The provisions of the ACT, particularly Section 2-A and 3 (IV) clearly establish the case of the petitioner that the Domestic Violence Case contains a continuous cause of action, therefore the claim of the petitioner for compensation is maintainable. While so, the conclusion reached by the Courts below is liable to be set aside. The Courts below also did not consider that the petitioner has established her case through her evidence as well as P.W.2 to P.W.6 supporting her evidence and non-consideration of the same warrants interference by this Court.

6. The grounds raised in Crl.R.C. No. 279 of 2021 are as follows:-

The conclusion reached by the Courts below are ex-facie illegal and



liable to be interfered with to prevent serious miscarriage of justice. The trial Court found that the cause of action to lodge the complaint for domestic violence commenced on 28.2.2011 and limitation of one year for filing complaint fell on 28.2.2012. Admittedly, the complaint was filed by the respondent on 8.8.2012, which was beyond the period of limitation with a delay of 6 months and having consider it, the trial court, without any reason, entertained the Domestic Violence Case and granted maintenance as claimed in the complaint by directing the petitioner to pay maintenance to the respondent/wife. When the complaint was beyond the period of limitation with inexplicable delay, the trial Court has no jurisdiction to proceed further with the complaint. hence the grant of maintenance by the trial Court, as claimed in the complaint, after dismissal of complaint, is irregular, illegal, illogic and resulted in serious miscarriage of justice. The Courts below failed to see that mere statement before Court will not be construed as evidence and when there was no proof or evidence as to the actual income or property, without ascertaining the same, the trial Court is not justified in determining the maintenance amount in proportion to the materials not available on record. Hence, the said finding of the trial Court is against law and without satisfying the requirement of law under the Evidence Act. The finding of the Courts below that the averments of petitioner in the pleadings prove that he has income and property to live with the respondent, cannot be construed that he is



able to pay regular maintenance of Rs.5000/-. The Courts below ought to have seen that the said averments were made to show that he is willing to live with the respondent and lead a life. Mere averments or pleadings are not evidence within the meaning of Evidence Act. In any event, the Courts below, having rejected the relief of compensation, ought to have applied the principles of law to the other relief of maintenance claimed in the complaint. Thus, the judgments of the Courts below in so far as it directs the petitioner to pay maintenance of Rs.5000/- pm., after dismissal of complaint itself are liable to be interfered with in the interest of justice.

7. The learned counsel appearing for the revision petitioner/husband in Crl.R.C.No.279 of 2021 and respondent in Crl.R.C.No.443 of 2021 would submit that the respondent/wife has filed the petition under the Protection of Women from Domestic Violence Act in DVC. No. 41 of 2012, stating that the marriage between her and the petitioner took place on 24.5.2004 at Thanjavur. However, the respondent/husband was addicted for alcohol and for 2 years only she lived with him and thereafter she was driven out from the matrimonial home on 16.5.2006 and from then on she has been residing in her parental home. Thereafter, the husband filed H.M.O.P. No. 143 of 2008 and the same ended in compromise and then, the petitioner and the respondent lived as husband and wife. However, the parents of the respondent/husband



have harassed the petitioner/wife by demanding more jewels. From the evidence on record, it could be seen that even on 20.08.2009 at about 2.00 p.m., the respondent/husband obtained the jewels of the petitioner/wife, some of the jewels were pledged into the bank and some were pledged in the name of his friend Palani on various dates. Totally the respondent herein pledged 23.25 sovereigns of gold jewels exclusively belongs to petitioner/wife which were presented for her marriage as sridhana. Further, the petitioner, as PW1, has deposed that the respondent used to harass her in a drunken mood and the parents and brother of the petitioner also harassed her, without preventing the petitioner-husband. Further they demanded money from the parents of the respondent/wife else threatened to kill her by opening the gas cylinder. It is in those circumstances, apprehending danger to her life, the petitioner left the matrimonial home on 28.2.2011. In such circumstances, the petitioner-wife, who was driven out of the matrimonial home by demand of more money and jewels, is entitled to maintenance from the petitioner and she is also entitled for damages for sum of Rs.5.00 lakhs. The respondent-husband is also liable to return back the articles mentioned in the list. Further the parents and brother of the petitioner threatened the respondent/wife over phone and the same also has to be restrained. These are all the allegations made by the petitioner/wife in the petition filed by her under the Domestic Violence Act. In fact after three months from the date of marriage, the father of the petitioner/wife obtained



jewels of the petitioner and then one by one the jewels were given to the father of the petitioner/wife and the same was also not questioned by the respondent/husband. However, the petitioner-wife demanded for separate house and the same was also denied by the respondent/husband. In any event, the claim made by the petitioner-wife has not been supported by material evidence, including oral evidence, but the courts below while dismissing the other relieves wrongly granted the relief of maintenance to the petitioner/wife. In order to prove the case of the petitioner, he examined R.W.1 to 4 and no documents were marked. The trial Court has failed to consider the above said evidences and awarded the maintenance. Therefore, the order in respect of granting maintenance to the petitioner/wife is liable to be set aside by allowing the revision petition in Crl.R.C.No.279 of 2021 and the Crl.R.C.No.443 of 2021 is liable to be dismissed.

8. On the other hand, the learned counsel appearing for the wife [respondent in Crl.R.C.No.279 of 2021 and the petitioner in Crl.R.C.No.443 of 2021] would contend that after the marriage, the petitioner was addicted to liquor and harassed the respondent by demanding money. He also pledged the gold ornaments of the respondent and failed to return them. The petitioner along with his family members harassed the respondent and thereby, she left the matrimonial home and now she is residing with her parents. The petitioner has been earning more than two lakhs per year and thereby, he has to pay



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maintenance to the respondent. Further the petitioner has to return the sreedhana articles annexed along with the petition and to pay the damages to the respondent for a sum of Rs.5.00 lakhs. The respondent, as PW1, has clearly deposed that the parents of the petitioner abused her in filthy language over phone and thereby, the respondent has filed the petition before the Court below. However, the Courts below did not take note of the abuses hurled towards the respondent by the petitioner and his family members. On the side of the respondent in Crl.R.C.No.279 of 2021 and petitioner in Crl.R.C.No.443 of 2021, before the trial Court, P.W.1 being the complainant was examined and other witnesses P.W.2 to P.W.6 were also examined and marked exhibit P1 to P7. The trial Court after evaluating the oral and documentary evidences, correctly awarded a sum of Rs.5,000/- towards maintenance to the respondent herein and other relieves were wrongly dismissed by the trial Court.

8(i). However, the learned Magistrate failed to appreciate that the sreedhana articles were in the custody of the petitioner/husband in Crl.R.C.No. 279 of 2021 and he is liable to return the said list of articles. Further the trial Court ought to have awarded damages Rs.5.00 lakhs and also granted order of injunction restraining the respondents 4 and 5 from using abusive filthy language over phone, but the trial Court failed to consider the same and dismissed the petition. Therefore, the Crl.R.C.No.279 of 2021 is liable to be dismissed and Crl.R.C.No.443 of 2021 is liable to be allowed.



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9. Since both revision petitions are arising out of the same judgement, this court heard both petitions together and passing this common order. Upon hearing both sides and perusing the judgement of the Courts below and grounds the point for determination in these petitions are :

10.1 Crl.R.C.No.279 of 2021 Whether the judgement passed by the I Additional district and Sessions Judge (P.C.R), Thanjavur, in Crl.A.No.40 of 2019 dated 11.1.2021 by confirming the order of the trial Court in awarding the maintenance of Rs.5000/- is sustainable in law and facts.

10.2 Crl.R.C.No.443 of 2021 Whether the judgement in C.A.No.11 of 2019 on the file of the I Additional District and Sessions Judge, (P.C.R.), Thanjavur dated 11.01.2021 confirming the order passed in D.V.C.No.41 of 2012 on the file of the Judicial Magistrate-II, Thanjavur dated 20.11.2018 by dismissing the relief of return of sreedhana articles, damages and restraining the respondents 4 and 5 from using abusive words through phone is sustainable in law and facts.

11. In this case, there is no contravention between the relationship of



the parties. The wife has filed a petition under the Protection of Women from Domestic Violence Act for the relief of awarding maintenance, return of articles, damages and retraining the respondents 4 and 5 from using abusive language. In order to prove her case, the respondent/wife, examined P.W.1 to 6 and marked Ex.P1 to P7. On the side of the husband, they have examined R.W. 1 to 4 and no documents were marked.

12. The main contention of the petitioner/wife is that after the marriage between her and the respondent, the respondent/husband harassed her in a drunken mood, pledged the jewels as well as the sreedhana articles, and refused to return back them. Further, the respondent along with family members harassed the petitioner by demanding money and thereby she was driven out from the matrimonial home and thereafter the husband filed HMOP and the same was compromised.

13. In order to prove the above said cruelty caused by the respondent, on the side of the petitioner, P.W. 1 to 6 were examined. P.W.1 is the petitioner in DVOP. She deposed about the marriage and alleged pledging of sreedhana articles and gold ornaments. But, it is the admitted fact that HMOP was filed by the first respondent in DVOP and it was resulted in compromise between the parties. In that compromise, the petitioner/wife herein has not



stated anything about the alleged non-return of jewels and has admitted that after re-union, on the same day itself, the respondent/husband had received the jewels from the petitioner/wife and pledged the same. Therefore, it is clear that the jewels were under the custody of the petitioner/wife. In order to prove that the jewels were given to the first respondent/husband, there is no evidence. In this context, P.W.1 in her evidence and petition stated that her husband pledged her jewels in his name and his friend one Palani, in the Meenatchi Pawn Shop, Tanjavur. But the petitioner failed to examine the pawn shop persons to prove her contentions. Mere allegations made in the petition are not sufficient to prove the case of the petitioner and she should have adduced cogent evidence to prove the allegations made in her complaint. Therefore, the petitioner/wife has failed to prove the fact that the above said sreedhana articles mentioned in the list are under the custody of the first respondent/husband. Further there is no evidence with regard to the demand of money made by the first respondent/husband and his family members. Thus, the petitioner failed to prove that the sreedhana articles were under the custody of the respondents. The trial Court also in this context, categorically analysed the evidences adduced on both sides and came to the fair conclusion that the petitioner/wife in DVOP failed to prove the contention that the sreedhana articles and jewels were under the custody of the respondent/husband.



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14. As far as relief of damages is concerned, no sufficient evidence was produced by the petitioner to prove any damages caused to her due to the acts of the first respondent and others. The petitioner has sought for damages due to the Domestic Violence caused to her by the respondents. The allegations as against the respondents are that the respondents harassed the complainant by demanding money and by leaking the gas, while the petitioner was sleeping and 4 and 5 respondents threatened over phone with filthy language. In order to prove the said allegations, P.W.2 to P.W.4 were examined, but no previous complaint was given immediately after the alleged occurrences. Though P.W.2 to P.W.4 deposed about the cruelty caused by the respondents, they are not residing in the local village where the petitioner and respondents lived. The petitioner failed to examine any witnesses near to the house of respondents where the alleged occurrence was said to be happened. In order to prove the threats made by 4 and 5 respondents, no call details were produced. Therefore, the petitioner failed to prove the Domestic Violence caused by the respondents. In this context the trial Court also elaborately discussed about the evidences and also discussed about the limitation for the provisions under sections 28 and 32 of Domestic Violence Act. The trial Court also after relying the Judgment of Hon'ble Supreme Court in Inderjit Singh Grewel Vs.State of Punjab and another (2011) 12 SCC 588, correctly applied



the proposition of law and dismissed the complaint. Further there is no evidence that 4th and the 5th respondents have abused her in filthy language and thereby they have to be restrained by the order of the Court. Thus, the evidence adduced on the side of the petitioner does not disclose anything about the alleged sreedhana articles, damages and the abusive words uttered by the respondents 4 and 5.

15. As far as the prayer for maintenance is concerned, it is admitted fact that the petitioner is residing in her parents house. The first respondent has also filed HMOP and due to the compromise, they have once again re-united; but again, there was some dispute between the parties, thereby the petitioner was residing with her parents. Therefore, the first respondent being the husband of the petitioner is liable to maintain his wife and thereby, the trial Court has awarded sum of Rs.5,000/- which is a reasonable award. Therefore, there is no infirmity found in the order of the trial court.

16. Further in the Appeal, the appellate Court also elaborately discussed about the evidences adduced on both sides and correctly confirmed the order passed by the learned Judicial Magistrate-II, Thanjavur in D.V.C.No. 41 of 2012. The petitioner/wife in DVOP failed to prove that the sreedhana



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articles are under the custody of the first respondent, damages caused to her and no grounds for granting injunction order restraining 4th and 5th respondent from abusing obscene words over phone. Therefore, as discussed above, this Court is of the opinion that the trial Court as well as the appellate Court, correctly arrived at a fair conclusion and no infirmity is found on the orders of the Courts below. Therefore, this court does not find any valid ground to interfere with the judgments of the Courts below.

17. In view of the above said discussions, this Revision petitions lack merits and deserves to be dismissed.

18. In the result,

(i) Crl.R.C.(MD)Nos.279 of 2021 is dismissed and the judgment dated 11.1.2021 made in C.A.No.40 of 2019 on the file of the learned I Additional District and Sessions Judge (P.C.R), Thanjavur, confirming the order dated 20.11.2018 made in D.V.C.No.41 of 2012 on the file of the Judicial Magistrate-II, Thanjavur is confirmed.

(ii) Crl.R.C.No.443 of 2021 is also dismissed and the judgement dated 11.1.2021 made in CA.No.11 of 2019 on the file of learned I Additional



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District & Sessions Judge (P.C.R) Thanjavur, confirming the order passed in D.V.C.No.41 of 2012 on the file of the Judicial Magistrate No.II, Thanjavur dated 20.11.2018 is confirmed.

(iii) Consequently, connected miscellaneous petition is closed.

20.10.2023

Index : Yes/No

Internet : Yes/No

NCC : Yes/No

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To

1. The I Additional District & Sessions Judge (P.C.R), Thanjavur.
2. The Judicial Magistrate No.II, Thanjavur.



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