



Crl.O.P.(MD).No.8871 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 16.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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1. G.R.Vidhya

2. Vivaan (Minor)

(Minor 2nd is represented by his mother
1st petitioner)

.. Petitioners/
Revision Petitioners/
Complainant

Vs.

1. Vijay Noble

2. Milkkaal

3. Noble

4. Vijula Jesudhas

5. Jesudhas

.. Respondents/Respondents/
Respondents

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records pertaining to the judgment dated 06.11.2019 in Revision Pettion No.34 of 2018 on the file of the Principal Sessions Judge, Kanyakumari at Nagercoil against the judgment dated 13.04.2018 in M.C.No.13 of 2015 on the file of Judicial Magistrate No.I,



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Nagercoil, and set aside the disallowed claim of the petitioner U/s.14, 18, 19(8), 20, 21 & 22 of Protection of Women from Domestic Violence Act and allow the Criminal Original Petition.

For Petitioners : Mr.M.Suresh

For Respondents : Mr.G.Thalaimutharasu
for R1

: No appearance for R2 to R5

ORDER

This petition is filed against the judgment dated 06.11.2019 passed in Revision Petition No.34 of 2018 on the file of the Principal Sessions Judge, Kanyakumari at Nagercoil.

2. The first petitioner is the wife of the first respondent herein. Marriage between them was solemnized on 09.09.2011 at Ramavarmapuram, Kanyakumari District. Due to the wedlock, the second petitioner was born on 26.06.2012. After sometime due to some misunderstanding between them, there was strained relationship between them. Hence, she filed a petition before the Social Welfare Officer, Nagercoil, on 03.10.2012. The Social Welfare Officer conducted a



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detailed enquiry and submitted the report dated 22.10.2012 to the learned Judicial Magistrate No.I, Nagercoil and recommended to pass appropriate orders. The petitioner/wife also filed a petition before the learned Judicial Magistrate No.II, Nagercoil and the same was taken on file in M.C.No.5 of 2012 and further, the same was transferred to the learned Judicial Magistrate No.I, Nagercoil and renumbered as M.C.No. 13 of 2015. In the said proceedings, the first petitioner claimed the following reliefs:-

- 1) order of protection for herself and her child;
- 2) to recover the amount of Rs.30,00,000/-which was given to the respondents as dowry;
- 3) for maintenance amount of Rs.20,000/- per month for herself and child;
- 4) to declare the 1st petitioner as guardian of the minor child;
- 5) to direct the respondents to pay a sum of Rs.10,00,000/- as compensation to the petitioner and ;
- 6) for directing to conduct family counselling between the 1st petitioner and her husband before the Family Counsellor of Kanniyakumari District Legal Aid services Authority.



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3. The learned trial Judge, after considering the evidence of PW1 and Ex.P1 to Ex.P4 and considering the oral and documentary evidence, granted maintenance of Rs.15,000/- as maintenance to the petitioners 1 and 2 and dismissed the relief sought for under Section 19(8) of the Domestic Violence Act, 2005, ie., the return of dowry amount against which the petitioner filed a revision before the revisional Court in Revision Petition No.34 of 2018 on the file of the Learned Principal Sessions Judge, Kanniyakumari at Nagercoil. The learned Principal Sessions Judge confirmed the order dated 13.04.2018 passed in M.C.No. 13 of 2015 by the learned Judicial Magistrate No.I, Nagercoil. Challenging the said concurrent finding, the petitioners filed this petition under Section 482 Cr.P.C.

4. The learned counsel for the petitioners submitted that even though the first petitioner has not produced any evidence to show that her parents gave Rs.30,00,000/- at the time of marriage as dowry, the amount of Rs.3,00,000/- (Three Lakhs only) was transferred to the account of the respondent/husband. He further submitted that the order was an exparte order. Hence, both the Courts below committed error in dismissing the claim made by the petitioner.



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5. This Court has considered the rival submissions made by both side counsel and perused the records and impugned judgments of the Courts below.

6. In this Criminal Original Petition the petitioner confined this argument relating to the dismissal of the relief under Section 19(8) of the Domestic Violence Act. The petitioner made a claim to return of the dowry amount of Rs.30,00,000/- transferred to the account of the respondent husband. The learned trial Judge dismissed the said relief on the ground that the petitioner has not proved her case of giving Rs. 30,00,000/- as a dowry. Petitioner filed the Revision before the learned Judge, Family Court, Nagercoil to return the said amount by setting aside the dismissal of the said relief in the M.C.No.13 of 2015. The learned Revision Court dismissed the petition without making any discussion on the said issue. Aggrieved over the same, petitioner filed this revision. This Court perused the report of Social Welfare Officer dated 22.10.2012 and the evidence of the first petitioner. From the evidence and the report of the Social Welfare Officer Rs.3,00,000/- (Three Lakhs only) was



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transferred from the account of the petitioner's mother to the respondent.

First respondent husband was set *exparte* and no appeal was preferred against the order passed in M.C.No.13 of 2015. Petitioner even though made the payment of Rs.30,00,000/- (Thirty Lakhs only) as a dowry, evidence on record established the *factum* of transfer of Rs.3,00,000/- to the account of the respondent.

7. But both the Courts below failed to consider the above material circumstances and the revision Court not even made discussion on the said issue. Therefore this Court is inclined to interfere with the order of the both the court below and is inclined to allow this petition in respect of Rs.3,00,000/-(Three lakhs only). Hence, this Court is inclined to allow this petition to that extent.

8. Accordingly, this Criminal Original Petition stands partly allowed in part with the following directions:-

(i) The petitioner is entitled to recover Rs.3,00,000/- (Three Lakhs only) from the respondent under Section 19(8) the Domestic Violence Act.



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(ii) The first respondent/husband is hereby directed to deposit the said amount within a period of two months from the date of receipt of a copy of this order failing which the first petitioner/wife is at liberty to recover the same with interest of 12% from 16.11.2023.

16.11.2023

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

PJL/sbn

To

1. The Principal Sessions Judge,
Kanyakumari at Nagercoil.
2. The Judicial Magistrate No.I,
Nagercoil.



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K.K.RAMAKRISHNAN, J.

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