



C.R.P. No. 1268 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.1268 of 2024

A.Manoranthini

... Petitioner

Vs

1. Arun Surya

2. Devasena Baskaran

3. Baskaran

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, pleaded to set aside the order passed in Criminal Appeal No.379 of 2023 in CrI.M.P.No.18513 of 2022 in D.V.C.No.11 of 2022 dated 11.01.2024 on the file of XXI Additional City Civil Court, Allikulam, Chennai.

For Petitioner : Mr.V.Purushothaman Reddy

For Respondents : Mr.S.Prabhu



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ORDER

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2. The brief facts of the case is that the petitioner/ wife had filed a complaint against the respondents, who are respectively her husband and in-laws, in D.V.C.No.11 of 2022 before the learned XVII Metropolitan Magistrate, Saidapet, Chennai, under Section 12 of the Protection of Women from Domestic Violence Act, 2005. The complaint was dismissed by the learned Magistrate vide order dated 22.02.2023. Aggrieved over the same, the petitioner had preferred an appeal under Section 29 of the Domestic Violence Act, 2005 r/w 386 of Cr.P.C., in CrI.A.No.379 of 2023 on the file of the learned XXI Additional Judge, City Civil Court, Allikulam, Chennai. When the appeal was posted on 11.01.2024, the learned appellate Judge, finding that the appellant was absent repeatedly and there was no representation, had dismissed the appeal for default. Challenging the order of dismiss for default, the present revision petition has been filed.

3. Learned counsel for the petitioner submitted that the petitioner/wife had



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preferred an appeal against the dismissal of the complaint and due to some miscommunication between the petitioner and her counsel, the petitioner was unable to appear before the appellate Court, thereby, the appellate Court had dismissed the appeal for default, due to non appearance of the petitioner. He further submitted that as per Section 384 of Cr.P.C., the criminal appeal cannot be dismissed for default and it has to be disposed of on merits only. Whereas, the appellate Court without going into the merits had dismissed the appeal for non appearance and thereby, he seeks to set aside the order of dismissal.

4. Per contra, Mr.S.Prabhu, the learned counsel representing the respondents submitted that the petitioner/appellant had been continuously absent and failed to appear before the appellate Court on number of occasions, thereby, the trial Court had dismissed the appeal for default. Hence, he prayed to dismiss the revision petition. He also submitted that in the event of this Court allowing the present revision petition, a direction may be issued to the petitioner/appellant to appear before the appellate Court regularly and argue the appeal without any further delay.

5. Heard the learned counsel for the petitioner and the learned counsel for



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the respondents and perused the materials available on record.

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6. It is seen that the petitioner/wife has preferred an appeal against the order of dismissal of her complaint against the respondents and the appellate Court, without going into the merits had dismissed the appeal for default. It has been repeatedly held by the Hon'ble Apex Court that the criminal matters cannot be dismissed for default even in the absence of the appellant and it must be decided only on merits. In this case, the appellate Court has not passed the order on merits, therefore, on this score alone, the present revision petition deserves to be allowed.

7. In view of the above, this Civil Revision Petition stands allowed and the dismissal order passed by the learned XXI Additional Judge, City Civil Court, Allikulam, Chennai, in CrI.A.No.379 of 2023 on 11.01.2024 is hereby set aside and the matter is remitted back to the appellate Court. The petitioner/appellant is directed to appear before the appellate Court within **two weeks** from the date of receipt of a copy of this order and on such appearance of the petitioner, the appeal shall be restored on its file and after affording opportunity to the respondents, the appeal shall be decided by the appellate Judge on merits in accordance with law as



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expeditiously as possible, preferably, within a period of three months from the appearance of the petitioner/appellant. No costs.

20.08.2024

Note : Registry is directed to return the original papers to the counsel for the petitioner forthwith.

Issue Order Copy on 21.08.2024

Index : Yes / No

Neutral Citation : Yes / No
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To

The XXI Additional City Civil Court, Allikulam, Chennai.



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A.D.JAGADISH CHANDIRA, J.

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