



WEB COPY



CRL.RC.No.1267 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.09.2023

DELIVERED ON : 08.03.2024

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRL.RC.No.1267 of 2019

Fathima Mary : Petitioner/Appellant/Petitioner

Vs.

1. Pattenraj (Died)

2. Mr.Devaraj

3. Mrs.Rani : Respondents/Respondents/Respondents

PRAYER: Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code, to call for the records of the learned I Additional Sessions Judge, City Civil Court, Chennai in C.A.No.108/2015 dated 10.08.2018 confirmed the Order in M.C.No.22/2010 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai and set aside the same.

For Petitioner : Mr.Auxilia Peter

For Respondents : Mr.H.Manojin
Legal Aid Counsel



CRL.RC.No.1267 of 2019

ORDER

WEB COPY This Criminal Revision Petition has been filed to set aside the Judgment of the learned I Additional Sessions Judge, City Civil Court, Chennai in C.A.No.108/2015 dated 10.08.2018 confirmed the Order in M.C.No.22/2010 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai.

2. The learned Counsel for the Petitioner submitted that the Petitioner is the wife. She filed the Petition seeking the relief under Domestic Violence Case before the Protection Officer. Based on the Petition filed by the wife, Protection Officer issued notice to the Respondent/husband and his parents. The notice returned with an endorsement as unserved. Therefore, the Protection Officer referred the matter to the Court of the learned IX Metropolitan Magistrate, Saidapet. The learned IX Metropolitan Magistrate, Saidapet held enquiry. During enquiry, the first Respondent/husband died. Therefore, the Petitioner/wife had filed M.P.No.1740/2011 impleading the parents of her husband as Respondents 2 & 3. The wife as Petitioner examined herself as P.W.1 and marked documents. The third Respondent/mother of the husband had examined herself as Respondent Witness-1. After due enquiry, the learned IX



CRL.RC.No.1267 of 2019

Metropolitan Magistrate in her order dated 27.02.2015, dismissed the Domestic Violence case. Aggrieved by the same, the Petitioner in Domestic Violence Case had preferred the Criminal Appeal before the learned I Additional Sessions Judge, City Civil Court, Chennai. The judgment of the learned I Additional Sessions Judge, City Civil Court confirmed the judgment of the learned IX Metropolitan Magistrate, Saidapet and dismissed the Appeal preferred by the wife as Petitioner/Appellant.

3. Aggrieved by the same, the wife as Petitioner before the learned IX Metropolitan Magistrate, had filed this Criminal Revision Petition.

4. The learned Counsel for the Revision Petitioner invited the attention of this Court to the discussion of evidence by the learned IX Metropolitan Magistrate in the Judgment of Domestic Violence Case dated 27.02.2015. Also, the learned Counsel for the Revision Petitioner invited the attention of this Court to the Judgment of the learned I Additional Sessions Judge, City Civil Court, Chennai confirmed the Judgment of the learned IX Metropolitan Magistrate.

5. It is the contention of the learned Counsel for the Revision Petitioner that the learned IX Metropolitan Magistrate has failed to consider



CRL.RC.No.1267 of 2019

the date on which the Domestic Violence Petition before the Protection Officer was preferred by the wife. Also, there are materials available before the learned IX Metropolitan Magistrate regarding the cruelty inflicted by the husband and his parents on the Petitioner/wife. The cruelty was suffered by the wife when she was in the joint household of the in laws. She was not permitted to talk with her parents. She was not permitted to move out of the house. She was not permitted to use mobile phones. She was not allowed to use pump and was forced to use well to draw water from the well for her use. She was not permitted to use other properties of the joint family during the period of her stay in in-laws house. She became pregnant twice. On both occasions, the husband along with the mother-in-law forced the wife/Petitioner to undergo abortion against her consent. These materials were not at all considered by the learned IX Metropolitan Magistrate and the learned IX Metropolitan Magistrate had dismissed the Petition only on the ground that after the death of the husband, the wife cannot implead the parents of the husband. Therefore, the relief sought by the wife cannot be granted. Also, the learned Counsel for the Petitioner assailed the order of the learned IX Metropolitan Magistrate stating that the learned IX Metropolitan Magistrate had in the course of the order discussed that the wife had separated from the husband 4 years prior to the filing of



CRL.RC.No.1267 of 2019

the Domestic Violence case. It is not so. She had been suffering in silence, the cruelty was meted out by the husband and in-laws. This fact was not highlighted by the learned IX Metropolitan Magistrate.

6. The learned Counsel for the Revision Petitioner also assailed the judgment of the learned I Additional Sessions Judge, City Civil Court confirming the order of the learned IX Metropolitan Magistrate placing reliance on the assessment of the evidence by the the learned IX Metropolitan Magistrate and not assessing the evidence available before the IX Metropolitan Magistrate independently by the learned I Additional Sessions Judge, City Civil Court. It is the contention of the learned Counsel for the Revision Petitioner that the relief sought for by the Petitioner/wife in the Domestic Violence case viz., (I) return of Sreedhana articles (ii) compensation for the cruelty and mental agony suffered by her due to the conduct of the husband and his parents. The Domestic violence case was filed by the Petitioner/wife seeking those reliefs are maintainable. The learned IX Metropolitan Magistrate misdirected herself and rejected those contention only on the ground that after the death of the husband, the parents of the husband cannot be impleaded. Therefore, the judgment of the learned IX Metropolitan Magistrate and the judgment of the learned I



CRL.RC.No.1267 of 2019

Additional Sessions Judge, City Civil Court, Chennai confirming the same are perverse and is to be set aside. The learned Counsel for the Revision Petitioner/wife seeks to Order return of Sreedhana jewels and also compensation.

7. The learned Counsel for the Petitioner/Wife had relied on the following rulings of the Hon'ble Supreme Court:-

(1) *Prabha Tyagi Vs. Kamlesh Devi in Criminal Appeal*

No.511/2022. The relevant portion reads as follows:

“15. It is held that there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed vis-a-vis allegation of domestic violence. However, it is not necessary that at the time of filing of an application by an aggrieved person, the domestic relationship should be subsisting. In other words, even if an aggrieved person is not in a domestic relationship with the Respondent in a shared household at the time of filing of an application under Section 12 of the D.V. Act but has at any point of time lived so or had the right to live and has been subjected to domestic violence or is later subjected to domestic violence on account of the domestic relationship, is entitled to file an application under Section 12 of the D.V.Act.”

(2) *Krishna Bhattacharjee Vs. Sarathi Choudhury and Anr. In Criminal Appeal No.1545/2015 (@ SLP (Crl.) No.10223/2014).* The relevant portion reads as follows:



we have to see whether retention of stridhan by the husband or any other family members is a continuing offence or not. There can be no dispute that wife can file a suit for realization of the stridhan but it does not debar her to lodge a criminal complaint for criminal breach of trust. We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of “aggrieved person” clearly postulates about the status of any woman who has been subjected to domestic violence as defined under [Section 3](#) of the said Act. “Economic abuse” as it has been defined in [Section 3\(iv\)](#) of the said Act has a large canvass. [Section 12](#), relevant portion of which have been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. It has been held in [Inderjit Singh Grewal](#) (supra) that [Section 498](#) of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under [Sections 28](#) and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the same as we are of the considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under [Section 12](#) of the 2005 Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. The concept of “continuing offence” gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act. In the present case, the wife had submitted the application on 22.05.2010 and the said authority had forwarded the same on 01.06.2010. In the application, the wife had mentioned that the husband had stopped payment of monthly maintenance from January 2010 and, therefore, she had been compelled to file the application for stridhan. Regard being had to the said concept of “continuing offence” and the demands made, we are disposed to think that the application was not



barred by limitation and the courts below as well as the High Court had fallen into a grave error by dismissing the application being barred by limitation.”

(3) Hiral P. Harsora and Ors. Vs. Kusum Narottamdas Harsora and Ors in Civil Appeal No.10084/2016 (Arising out of SLP (Civil) No.9132/2015). The relevant portion reads as follows:

“16. What is of great significance is that the 2005 Act is to provide for effective protection of the rights of women who are victims of violence of any kind occurring within the family. The preamble also makes it clear that the reach of the Act is that violence, whether physical, sexual, verbal, emotional or economic, are all to be redressed by the statute. That the perpetrators and abettors of such violence can, in given situations, be women themselves, is obvious. With this object in mind, let us now examine the provisions of the statute itself.

21. When we come to Section 19 and residence orders that can be passed by the Magistrate, Section 19(1)(c) makes it clear that the Magistrate may pass a residence order, on being satisfied that domestic violence has taken place, and may restrain the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides. This again is a pointer to the fact that a residence order will be toothless unless the relatives, which include female relatives of the respondent, are also bound by it. And we have seen from the definition of “respondent” that this can only be the case when a wife or a common law wife is an aggrieved person, and not if any other woman belonging to a family is an aggrieved person. Therefore, in the case of a wife or a common law wife complaining of domestic violence, the husband’s relatives including mother-in-law and sister-in-law can be arrayed as respondents and



WEB COPY



CRL.RC.No.1267 of 2019

effective orders passed against them. But in the case of a mother-in-law or sister-in-law who is an aggrieved person, the respondent can only be an “adult male person” and since his relatives are not within the main part of the definition of respondent in [Section 2\(q\)](#), residence orders passed by the Magistrate under [Section 19\(1\)\(c\)](#) against female relatives of such person would be unenforceable as they cannot be made parties to petitions under the Act.

22. When we come to [Section 20](#), it is clear that a Magistrate may direct the respondent to pay monetary relief to the aggrieved person, of various kinds, mentioned in the Section. If the respondent is only to be an “adult male person”, and the money payable has to be as a result of domestic violence, compensation due from a daughter-in-law to a mother-in-law for domestic violence inflicted would not be available, whereas in a converse case, the daughter-in-law, being a wife, would be covered by the proviso to [Section 2\(q\)](#) and would consequently be entitled to monetary relief against her husband and his female relatives, which includes the mother-in-law.”

8. Mr.Manojin, learned Counsel nominated by the Legal Aid Committee for the Respondent submitted that the wife had filed Domestic Violence Case against the Husband only. During the pendency of the Domestic Violence Case, Husband died. Subsequently, she had impleaded the parents of the Husband. In the evidence, she had clearly admitted that she was living with her parents, at the time of filing of the Domestic Violence Case.

9. As per the Provisions of the Domestic Violence Act, Domestic



CRL.RC.No.1267 of 2019

date of occurrence. Here, the Wife in this case, had left the matrimonial home on her own and she had been living with her parents. After leaving the matrimonial home after three years, on the fourth year, she had filed the Petition. There are no averments against the in-laws in the Petition. While so, after the death of the Husband, automatically the Petition loses its relevance. Therefore, the Order passed by the learned Judge dismissing the Domestic Violence Case is a well-reasoned Order and it does not warrant any interference by this Court. Further, the learned Counsel for the Respondent/in-laws submitted that during the pendency of the Criminal Revision Case, the mother of the Husband had also died. Only the father of the Husband is alive whereas enough evidence in the trial Court that the Petitioner's sister was working as domestic help and she was earning Rs.3,000/- per month. With her earnings, the Petitioner and her parents were living as family. Therefore, under those circumstances, the claim of the Petitioner/wife in the Domestic Violence case, that her parents provided Sreedhana articles had no merit and unbelievable. Further, the mother of the Husband had in her evidence as Respondent witness stated that they were aware of the condition of the son. Therefore, they were clear in the matrimonial alliances that a girl hailing from poor family alone will be acceptable to the parents of the Husband. Those consideration only



CRL.RC.No.1267 of 2019

weighed with Respondents to arrange the marriage of their son with the Petitioner in Domestic Violence Case. While so, her/the Petitioner's claim that her parents sent Sreedhana articles is unbelievable and the learned Judge rightly dismissed the Domestic Violence Case. This case has no merits and is to be dismissed.

Point for Consideration:

Whether the Judgment of the learned I Additional Sessions Judge, City Civil Court, Chennai in C.A.No.108/2015 dated 10.08.2018 confirmed the Order in M.C.No.22/2010 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai is to be set aside as perverse?

10. Heard the learned Counsel for the Revision Petitioner and the learned Counsel for the Respondent.

11. Perused the deposition of the Witnesses. Perused the documents and the Judgment of the learned IX Metropolitan Magistrate, Saidapet and the learned I Additional Sessions Judge, City Civil Court.

12. On perusal of the records, it is found that the learned Counsel for the Respondents has rightly pointed out that the Wife had left the matrimonial home immediately after the marriage due to misunderstanding between the Husband and the Wife. While so, after moving to her parents



CRL.RC.No.1267 of 2019

house, she had instituted the Domestic Violence Case. On the date of filing of the Domestic Violence Case four years had lapsed. Therefore, the Domestic Violence Case is not maintainable on the point of limitation. Still, the learned Judicial Magistrate had accepted the contention of the Petitioner and took it on file, issued notice to the Husband and the Husband also entered appearance during pendency of the Domestic Violence Case. When the Husband died, automatically as per the Provisions in the Domestic Violence Act, the case has to be dismissed as abated. Still, Wife as Petitioner in Domestic Violence Case, impleaded the in-laws/parents of the Husband. Therefore, it is the contention of the Respondent before the trial Court that they had not received any dowry, they had not harassed the Petitioner. This Petition is filed by the Wife only to wreck vengeance on the parents of the Husband. Thus, Petition lacks merits and is to be dismissed. Accordingly, the learned IX Metropolitan Magistrate, Saidapet had rightly dismissed the Petition that when the Wife filed Domestic Violence Case, in her Petition, she stated that her sister was employed as domestic help and living as joint family. When the family is struggling for daily existence, the claim of the Petitioner in Domestic Violence Case that her parents had gifted 30 sovereigns of gold, at the time of marriage is found to be unreasonable unacceptable and unbelievable. List of



CRL.RC.No.1267 of 2019

Sreedhana articles furnished before the trial Court. Therefore, the claim for returning the Sreedhana articles, the parents of the Husband impleaded is found unreasonable unacceptable and the same is to be dismissed.

13. After hearing the arguments, the learned Counsel for the Petitioner/Wife had relied on the rulings of the Hon'ble Supreme Court in ***Prabha Tyagi Vs. Kamlesh Devi in Criminal Appeal No.511/2022***, (2) ***Krishna Bhattacharjee Vs. Sarathi Choudhury and Anr. In Criminal Appeal No.1545/2015 (@ SLP (Crl.) No.10223/2014)*** and (3) ***Hiral P. Harsora and Ors. Vs. Kusum Narottamdas Harsora and Ors in Civil Appeal No.10084/2016 (Arising out of SLP (Civil) No.9132/2015)***. The fact of the above rulings does not have application to the facts of this case. Here is a case where the Wife had filed Domestic Violence Petition against the Husband. The learned IX Metropolitan Magistrate on facts and law and on proper appreciation of evidence dismissed the Maintenance Case. Aggrieved by the same, the Petitioner/Wife moved Criminal Appeal before the learned I Additional Sessions Judge, Chennai. After hearing the arguments, the learned Sessions Judge had dismissed C.A.No.108/2015, dated 10.08.2018 thereby confirming the Judgment of dismissal in M.C.No.23/2010 dated 27.02.2015. From the Judgment of the learned IX



CRL.RC.No.1267 of 2019

Metropolitan Magistrate and Judgment of the learned I Additional Sessions

Judge, it is found that both the Courts had considered the evidence. This Court as Revisional Court cannot re-appreciate the evidence. As per the facts of the case, the Wife did not live with her Husband. She filed Maintenance Case showing the Husband is dead. In his place, his parents were impleaded. Also, the Maintenance Case had been filed after four years after the death of the Husband which is found to be barred by limitation. Also, when the Wife had not been residing with the in-laws during the life time of the Husband, she cannot seek maintenance from her in-laws that too after four years. The interpretation in the rulings had been cited by the learned Counsel for the Revision Petitioner that the members of the Husband's family can be arrayed as Respondents will not hold good in this case as the Petitioner was not residing with the parents of the deceased when the Maintenance Case was filed. During the life time of the Husband, she was living with him in a separate house. After the death of the Husband, she claimed maintenance from her in-laws that too after the period of four years. Therefore, the findings given by the learned IX Metropolitan Magistrate, Saidapet, Chennai cannot be treated as perverse. Similarly, on re-appreciation of evidence, the dismissal of M.C.No.22/2010 and C.A.No.108/2015 also is found not perverse. Under those



CRL.RC.No.1267 of 2019

circumstances, interpreting Hindu Coparcenary Law and Article 14 of the Constitution of India for seeking maintenance from the in-laws by the Wife/daughter-in-law cannot be appreciated as reasonable as per the law of land is available.

14. In the light of the above discussions, the *point for consideration is answered in favour of the Respondent and against the Revision Petitioner*. The Judgment of the learned I Additional Sessions Judge, City Civil Court, Chennai in C.A.No.108/2015 dated 10.08.2018 confirmed the Order in M.C.No.22/2010 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai is found to be well-reasoned Judgment that does not warrant any interference.

In the result, this **Criminal Revision is dismissed**. The Judgment of the learned I Additional Sessions Judge, City Civil Court, Chennai in C.A.No.108/2015 dated 10.08.2018 confirming the Order in M.C.No.22/2010 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai is confirmed.

08.03.2024

Index: Yes/No

Internet: Yes/No

<https://www.mhc.tn.gov.in/judg> Speaking Order/Non-speaking Order



CRL.RC.No.1267 of 2019

dh
WEB COPY

To

1. The I Additional Sessions Judge,
City Civil Court, Chennai.
2. The IX Metropolitan Magistrate,
Saidapet, Chennai.
3. The Public Prosecutor,
High Court, Madras.



WEB COPY



CRL.RC.No.1267 of 2019

SATHI KUMAR SUKUMARA KURUP, J.,

dh

Judgment made in
CRL.RC.No.1267 of 2019

08.03.2024