

Crl.R.C.(MD).No.1121 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	20.06.2024
Pronounced On	:	22.11.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD). No.1121 of 2023

and

Crl.M.P.(MD).No.14458 of 2023

1.Thangakumaran

2.M.Ravindran

... Petitioners

Vs.

Deepa

... Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the impugned order passed by the learned Judicial Magistrate, Tenkasi, in Cr.M.P.No.7626 of 2023 in D.V.C.No.8 of 2023 dated 15.09.2023 and set aside the same.

For Petitioners : Mr.G.Karuppasamy Pandian

For Respondent : Mr.R.J.Karthick



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ORDER

The first petitioner and the second petitioner, who are the respondents in DVC No. 8 of 2023 on the file of the learned Judicial Master, Tenkasi, filed this revision petition to set aside the impugned order passed by the learned Judicial Magistrate, Tenkasi, in Cr.M.P.No.7626 of 2023 in D.V.C.No.8 of 2023 dated 15.09.2023.

2.The respondent is the wife of the first petitioner and entered into the marriage on 02.03.2015. Thereafter, within two years, a matrimonial discord erupted between them and hence, she left the matrimonial home and thereafter she filed petition in D.V.C.No.8 of 2023 seeking various reliefs. The learned Judicial Magistrate, after considering the facts and circumstances of the case, granted various reliefs including the payment of monthly maintenance of Rs. 15,000/- to the respondent. Thereafter, the respondent filed the execution petition before the Court below. In the said execution petition, the petitioner failed to appear in spite of receipt of summons. Hence, the learned Judicial Magistrate issued the NBW to the petitioner on 11.09.2023. After the issuance of NBW, the petitioner filed a petition under Section 70(2) of Cr.P.C., to recall the NBW



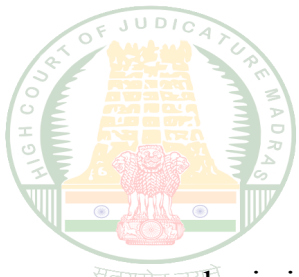
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issued against them. The said petition was dismissed by the learned Trial Judge and hence, they filed this revision challenging the same.

3.The learned counsel for the petitioners submitted that as per the law laid down by this court in the following judgments:

3.1.The learned Judicial Magistrate shall recall the warrant without insisting the presence of the petitioner. The learned counsel further submitted that the appeal is pending before the competent court against the award passed in D.V.C.No.8 of 2023. The learned trial Judge ought to have allowed the application for recall of warrant and ought to have given an opportunity to the petitioner to contest the case on merits.

4.On the other hand, the learned counsel for the wife submitted that the direction of this Court to pay the interim order passed in D.V.C.No.8 of 2023 was as early as on 18.05.2023 and it has not been complied with. Because of the non compliance of the order, the respondent is unable to meet her daily livelihood and hence, she is totally deprived of her livelihood and hence her right of livelihood is in stake. In the said circumstances, the learned trial Judge considering the nature of the proceedings, dismissed the petition and hence, the



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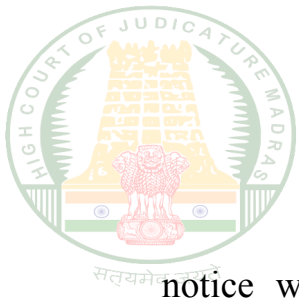
order is in accordance with the law.

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5.This Court considered the rival submission made on either side and perused the records and also precedents relied upon by them.

5.1. Whether the Court below correct in dismissing the warrant recall petition filed by the petitioner and consequently, the Court below have right to insist the appearance of the petitioner in the execution petition filed by the wife under the Protection of Women from Domestic Violence Act, 2005?

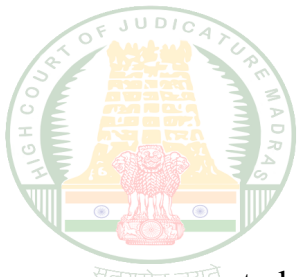
6.From the records, it is clear that the learned Judicial Magistrate, has allowed the application filed by the wife/respondent herein in D.V.C.No.8 of 2023 and directed to pay monthly maintenance and to pay the compensation. The said order was passed in D.V.C.No.8 of 2023, on 18.05.2023. Thereafter, the appeal was filed before the Jurisdictional Appellate Court. There was no stay granted by the jurisdiction Appellate Court. In the said circumstances, the respondent filed a petition to execute the award passed in D.V.C.No.8 of 2023. More particularly, the execution of the maintenance amount. In the said circumstances, the learned trial Judge issued the notice to the petitioner. The said



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notice was returned as unclaimed. Thereafter, the memo was filed by the respondent stating that the address mentioned in the execution petition was correct and the same was mentioned in the appeal grounds also. Therefore, there was an intentional absence on the part of the petitioner. Considering the same, the learned trial Judge issued the Non Bailable Warrant. Issuance of the Non-Bailable Warrant, has not been challenged and they only challenged the dismissal of the recall petition.

7. In this specific case, as rightly argued by the learned counsel for respondent, the maintenance amount was not paid right from beginning. More particularly, in spite of the order of the Court, at the time of the transfer to Tenkasi Court to pay the maintenance amount, there was no amount was paid. The learned Trial Judge has taken into consideration of the huge arrears of the maintenance and the Rule 6(5) of the Protection of Women from Domestic Violence Rules, 2006, dismissed the warrant recall petition. From the consideration of the above facts and circumstances of the case, this Court finds no merit in the contention of the learned counsel for the petitioner that the learned Trial Judge has committed error in insisting the petitioner's presence at the time of the recall petition on the basis of the precedents relied upon by him



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reported in 2018(3) MWN (Cr.) 542 and 2016 (2) MLJ (Crl) 490.

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8.It is the duty of the petitioner to appear before the Court below and comply the order passed in D.V.C.No.8 of 2023. Before that there was a conditional order passed to pay the maintenance by this Court in the Tr.C.M.P. (MD).No.327 of 2020. In the said circumstances, the proceedings pending more than 4 years. There was no payment of any amount. Therefore, the learned Trial Judge has applied the Rule 6(5) and issued the non-bailable warrant to enforce the maintenance award. Before issuing the same, he has correctly followed the procedure, namely, he has firstly issued notice and the petitioners have intentionally refused to receive the notice and the same was returned unclaimed. Therefore, without presence of the parties, execution of the order passed under the Domestic Violence Act, is impossible one. Therefore, the learned Trial Judge has applied the purposive interpretation to the provision of the Domestic Violence Act and the Rules. This Court also considered the Rule 6(5) and also Rule 10(3) to affirm the finding of the learned Trial Judge. The said Rules are as follows:



Rule 6(5)	Rule 10(3)
<i>Rule 6(5):The applications under Section 12 shall be dealt with and the orders enforced in the same manner laid down under Section 125 of the Code of Criminal Procedure, 1973.</i>	<i>Rule 10(3):The Magistrate may, in addition to the orders for effective relief in any case, also issue directions relating general practice for better handling of the cases, to the protection officers within his jurisdiction and the protection Officers shall be bound to carry out the same.</i>

To prevent women from facing needless distress, destitution and starvation, the DV Act was enacted by transforming the existing preventive provision into punitive provision to meet out the society's changing needs. The same was emphasised by the Hon'ble Supreme Court in the case of **Badshah Vs. Urmila Badshah Godge** reported in **2014 (1) SCC 188**.

15.The provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from "adversarial" litigation to social context adjudication is the need of the hour.

16. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes



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societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs."

8.1. Similarly, in **Thota Sesharathamma v. Thota Manikyamma**, reported in **(1991)4SCC 312**, the Hon'ble Supreme Court has held as follows:

20. In a socialist democracy governed by rule of law, law as a social engineering should bring about transformation in the social structure. Whenever a socio-economic legislation or the rule or instruments touching the implementation of welfare measures arise for consideration, this historical evidence furnishes the foundation and all other relevant material would be kept at the back of the Court's mind."

9. The transformation of process of execution of maintenance order into penal statute is a measure of social justice and specially enacted to protect women and children and would fall within the constitutional sweep of Article 15(3) and reinforced under Article 39. So, Sections 31 and 18 of the DV Act calling for construction by the Courts are not petrified, but vibrant words with social function to fulfil.



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10. Threat of arrest is timely requirement to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves.

11. It is also aimed to eradicate the situation of a poor woman asked to run from pillar to post for getting speedy recovery under the Code of Criminal Procedure. There is a complete transformation from the object of preventive maintenance proceedings under the Code of Criminal Procedure into a punitive one ie., the object of the maintenance proceeding is not to punish a person for his past neglect, but to prevent vagrancy by compelling husband to make payment as a moral claim to support which has been transformed into legal obligation with probable threat of registration of the criminal case, arrest of husband and likely conviction.

12. It is well settled principle that in interpreting the provision, if two views are possible, the one which is enabling the achievement of object of the DV Act, is to be accepted. The Hon'ble Supreme Court has reiterated the said principle in the following cases:



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12.1.(a) Ramesh Chander Kaushal v. Veena Kaushal reported in (1978)

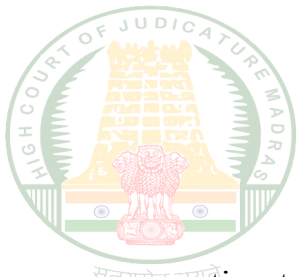
4 SCC 70:

9.... The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause — the cause of the derelicts.”

12.2(b). Fuzlunbi v. K. Khader Vali, (1980) 4 SCC 125:

“The conscience of social justice, the cornerstone of our Constitution will be violated and the soul of the scheme of Chapter IX of the Code, a secular safeguard of British-Indian vintage against the outrage of jetsam women and floatsam children, will be defiled if judicial interpretation sabotages the true meaning and reduces a benign protection into a damp squib.”

13.This court perused the rules by applying the above principles of interpretation and also taken into consideration of following paragraph of judgment of the the Hon'ble Supreme Court decision in the case of **Jagraj Singh v. Birpal Kaur**, reported in **(2007) 2 SCC 564** where it has been held that during the course of the family Court proceedings, the Court has power to insist the



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parties to execute the order passed by it by making presence of the parties:

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16. The above decisions of this Court make it more than clear that the approach of a court of law in matrimonial matters is much more constructive, affirmative and productive rather than abstract, theoretical or doctrinaire. Matrimonial matters must be considered by courts with human angle and sensitivity. Delicate issues affecting conjugal relations have to be handled carefully and legal provisions should be construed and interpreted without being oblivious or unmindful of human weaknesses. Probably, this aspect has been kept in view by the legislature in enacting sub-section (2) of Section 23 of the Act by requiring a court to make all efforts to bring about reconciliation between the parties.

26. From the above case-law, in our judgment, it is clear that a court is expected, nay, bound, to make all attempts and endeavours for reconciliation. To us, sub-section (2) of Section 23 is a salutary provision exhibiting the intention of Parliament requiring the court “in the first instance” to make every endeavour to bring about a reconciliation between the parties. If in the light of the above intention and paramount



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consideration of the legislature in enacting such provision, an order is passed by a matrimonial court asking a party to the proceeding (husband or wife) to remain personally present, it cannot successfully be contended that the court has no such power and in case a party to a proceeding does not remain present, at the most, the court can proceed to decide the case ex parte against him/her. Upholding of such argument would virtually make the benevolent provision nugatory, ineffective and unworkable, defeating the laudable object of reconciliation in matrimonial disputes. The contention of the learned counsel for the appellant, therefore, cannot be upheld.

29. The learned counsel for the husband contended before this Court that the sole intention of the wife was to get him arrested and it was not possible for the husband to come to India. Considering the grievance and apprehension on the part of the husband, this Court, while issuing notice on 29-5-2006 granted interim stay against issuance of non-bailable warrant and the said interim relief continues even today. At the time of hearing of the appeal, we have asked the learned counsel for the appellant husband that if the apprehension of the husband is that he would be arrested on coming to India, interim relief granted



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earlier and operative can be continued so as to enable him to remain personally present in Court and to comply with the order. The learned counsel, however, insisted that no such order could have been passed by the Court. Since we are of the view that the Court has jurisdiction to pass such order, it cannot be said that the direction issued by the High Court is without authority of law.

30. Again, we are exercising discretionary and equitable jurisdiction under Article 136 of the Constitution. If, in spite of protection granted by this Court, the husband is bent upon to disobey and flout the order passed by the Court which is in consonance with Section 23(2) of the Act, he cannot claim as of right the equitable relief from this Court.

14.A conjoined reading of the both rules and also the object of the Act, this Court finds that the dismissal of the petition to recall the warrant without the presence of the petitioner is in accordance with the law.

15.Once he filed the petition without the presence of the petitioner, the execution of the order of the domestic violence case can be withheld indefinitely.



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In the said circumstances, the learned trial Judge correctly dismissed the petition.

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The interpretation to the Act, the provision of the Act is to be purposive one. By giving the purposive interpretation to the above rule and also the various provision of Act, the learned trial Judge has jurisdiction to dismiss the petition.

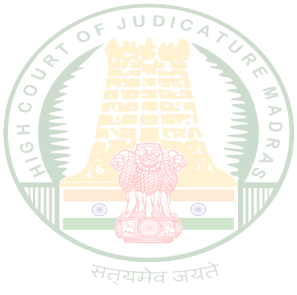
16. The above all demonstrates that the Court has power to insist the party to execute the order passed by it. In the said circumstances, this Court finds no merit in the petition. But, considering nature of the case, this Court is inclined to dispose the revision with the following directions:

16.1.The petitioner is directed to appear before the court and file the recall petition with deposit of the 50% of the arrears amount.

16.2.On such deposit, the learned trial Judge is directed to recall the warrant issued by this Court.

16.3.In the event of failure to comply the above direction, the learned Judicial Magistrate is at liberty to proceed further as per the Act and Rules of the Protection of Women from Domestic Violence Rules and set aside the award passed in D.V.C.No.8 of 2023.

16.4.The petitioners are further directed to appear regularly before the said Court till the disposal of the D.V.C.No. 8 of 2023.



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16.5.Considering the age of the second petitioner, his presence on subsequent hearings, that is, after recall petition, upon depositing the 50% arrears of the maintenance amount, is dispensed with before the said Court.

22.11.2024

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

To

1. The IIIrd Additional District Judge,
Thanjavur at Pattukottai.
2. The Fast Track Court (Magisterial Level),
Pattukottai, Thanjavur District.
3. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

vsg

Pre-delivery Order made in
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