



Crl.R.C.No.520 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.03.2025

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Revision Case No.520 of 2021

Jesima Banu

.. Petitioner

Versus

A. Shafi Alam

.. Respondent

Criminal Revision case is filed under Section 397 and 401 of Cr.P.C to set aside the judgment dated 08.07.2021 made in C.A. No. 132 of 2019 on the file of the learned Principal Sessions Court, Tiruppur modifying the judgment dated 28.11.2019 made in D.V.A. No. 1 of 2016 on the file of the learned Judicial Magistrate, Dharapuram.

For Revision Petitioner : Mr. M. Ganesh
for Mr. M. Manoharan

For Respondent : Ms. R. Mahalakshmi



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ORDER

WEB COPY This Criminal Revision Case is filed to set aside the judgment dated 08.07.2021 made in Crl.A. No.132 of 2019 on the file of learned Principal Sessions Judge, Tiruppur modifying the judgment dated 28.11.2019 made in D.V.A. No. 1 of 2016 on the file of learned Judicial Magistrate, Dharapuram.

2. The Petitioner herein has filed D.V.A. No. 1 of 2016 against her husband/Respondent herein, her sister-in-law, husband of the sister-in-law and one another person related to the Respondent herein. According to the Revision Petitioner/Wife the marriage between her and the Respondent herein was solemnised on 03.09.2000 and out of the wedlock, two children were born in the year 2001 and 2005 respectively. It was further stated by the Revision Petitioner/wife that after some years of marriage, the Respondent picked up quarrel with her under the influence of alcohol. Also the Revision Petitioner was shocked to learn that the Respondent herein had illicit relationship with many women. When this was questioned by the Revision Petitioner, the Respondent abused her physically and mentally. Therefore, she approached the learned Judicial Magistrate, Dharapuram by filing D.V.A. No.1 of 2016.

3. On notice in D.V.A. No. 1 of 2016, the Respondent herein has



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filed a detailed counter affidavit denying the averments in the Petition filed by the Petitioner. According to the Respondent herein, he is running a photo studio and with the meagre income he was running his family. The Petitioner after the birth of the first daughter, refused to assist his mother who suffered from Cancer. When that was questioned, she abused the Respondent as well as his mother and left his matrimonial company along with the minor daughter. When the mother of the first Respondent was in death bed, she yearned to meet the minor daughter. Therefore, the Respondent requested the Petitioner to bring the minor daughter so that his mother can see her. In spite of their request, the Petitioner refused to bring the minor daughter. Ultimately, his mother died. After two years of death of the mother of the Respondent, the brother and sister of the Respondent made conciliation and brought the Petitioner to the matrimonial home. Thereafter, on 14.09.2005 the second daughter was born. Again the Petitioner started humiliating and ill-treating the Respondent and indulged in repeated quarrels. Even when the second and third Respondents visited the matrimonial home, the Petitioner humiliated and abused them for no reason. Later, the Petitioner, without informing the Respondent, left the matrimonial home with the two minor daughters. Therefore, the Respondent has given a complaint to the Jamath. At the intervention of the religious leaders, the Petitioner returned to the matrimonial



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home, however, she did not reform her attitude. The Respondent therefore admitted his first daughter in a hostel at Karur. The Petitioner questioned the Respondent as to why the first daughter was admitted in a hostel and indulged in quarrel. Ultimately, the Petitioner once again left the matrimonial home with the second daughter and living with her parents. When the Respondent requested the Petitioner to send the second daughter to the matrimonial home so that he can admit her in a School, she refused to do so. Therefore, the Respondent has given a complaint dated 03.09.2014 to The All Women Police Station, Pollachi and in the enquiry conducted by the police officials, the Petitioner categorically informed that she is not prepared to live with the Respondent. In such circumstances, the Respondent pronounced triple talaq and sent it to the concerned Jamath. Questioning the same, the Petitioner has filed O.S. No. 330 of 2015 before the Sub Court Pollachi and it is pending. In the meantime, the Petitioner went to the School at Karur District to meet the elder daughter and without the knowledge of the School authorities, brought the elder daughter with her to Dharapuram, Tiruppur District. In this context, on 02.12.2014, the Respondent has given a complaint to the Aravakurichi Police Station based on which an enquiry was conducted during which the Petitioner apologised for her fault. Notwithstanding the above, the Respondent had spent for the education of the two daughters and now the first



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daughter had completed Chartered Accountant and the second daughter is studying IX Standard. In spite of the same, the Petitioner filed M.C. No. 23 of 2015 for maintenance. She has also given a criminal complaint in Crime No. 385 of 2015 for the offence under Section 294 (b) IPC in which the first Respondent is regularly appearing before the learned Judicial Magistrate No.1, Pollachi. The Petitioner also filed G.W.O.P. No. 143 of 2017 and it is pending. Notwithstanding all the above cases, now the present D.V.A. No. 1 of 2016 has been filed which is nothing but an abuse of process of law. Therefore, the learned Counsel for the Respondent prayed for dismissal of D.V.A. No. 1 of 2016.

4. The Respondents 2 and 3 in D.V.A. No. 1 of 2016 have filed separate counter affidavit stating that they have never intervened with the matrimonial life of the Petitioner and the Respondent. The Respondents 2 and 3 have been impleaded only to harass them. Therefore, they prayed for dismissal of the D.V.A. No. 1 of 2016.

5. Before the learned Judicial Magistrate, Dharapuram, Tiruppur, the Petitioner examined herself as P.W-1 and one Mohammed Sirajudeen was examined as P.W-2 and 20 documents were marked as Ex.P-1 to Ex.P-20. On behalf of the Respondents in D.V.A. No. 1 of 2016, the Respondent herein



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examined himself as R.W-1 and one Raja Servai was examined as R.W-2 and

10 documents were marked as Ex.R-1 to Ex.R-10. The learned Judicial

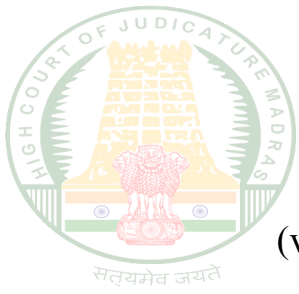
Magistrate, Dharapuram on considering the oral and documentary evidence, partly allowed the D.V.A. No. 1 of 2016 on 28.11.2019 and issued a slew of directions and they are as follows:-

(i) The Respondent herein has to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) to the Petitioner herein towards compensation and until such payment is made, a charge is created on the property standing in the name of the Respondent at Pollachi duly covered in the registered document No. 832 of 2003 dated 11.04.2003

(ii) The Respondents 1 to 4 in D.V.A. No. 1 of 2016, their men, relatives or any one shall not in any manner, either directly or indirectly, cause any domestic violence or instigate the Respondents or anyone else to cause any such violence against the Petitioner herein

(iii) The Respondents 1 to 4 shall not interfere with the Petitioner in her place of work or disturb her through phone or any other electronic accessories

(iv) As per Section 19 of The Protection of Women from Domestic Violence Act, the Respondent herein shall pay to the Petitioner herein Rs.10,000/- per month towards rent.



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(v) As per Section 19 (8) of the Act, the Respondent herein shall

return to the Petitioner the 158.450 grams of jewels, watch and Rs.30,000/- cash to her within one month

6. Aggrieved by the same, the Respondent preferred Criminal Appeal No. 132 of 2019 before the learned Principal Sessions Judge, Tirupur. After hearing the arguments of the learned Counsel for the Appellant and the Respondent, the learned Principal Sessions Judge, Tiruppur, by judgment dated 08.07.2021 in C.A.No.132 of 2019 reduced the compensation of Rs.10,00,000/- to Rs.1,00,000/-. Similarly, the direction to pay Rs.10,000/- towards rent to the Petitioner was reduced to Rs.5,000/-. It was also recorded in the order dated 08.06.2021 that the two minor children are in the custody of the first Respondent-husband and the Petitioner/wife was given visitation right to meet the minor children.

7. As against the Judgment dated 08.06.2021 passed in Criminal Appeal No. 132 of 2019, the Petitioner-wife has come up with this Criminal Revision.

8. The learned Counsel for the Revision Petitioner invited the



attention of the Court to the discussion of the evidence by the learned Judicial Magistrate in D.V.A.No.1 of 2016 directing the first Respondent to pay Rs.10,000/- as monthly rent, but it was reduced by the Appellate Court to Rs.5,000/- without any basis. It is further contended that even though the Appellate Court directed the first Respondent to return the jewels, it was not returned to her till date. Further, the amount directed to be deposited by the Respondent before the Appellate Court has not been deposited till date. However, the learned Counsel for the Petitioner fairly submitted that as per the direction issued in M.C. No. 23 of 2015, the first Respondent is paying monthly maintenance of Rs.5,000/- to the Petitioner.

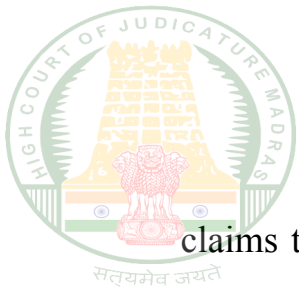
9. Per contra, the learned Counsel for the Respondent submitted that the petition had been filed by the wife under the Protection of Women from Domestic Violence Act, 2005 seeking relief under Section 18 to 22. After filing D.V.A. No. 1 of 2016, the Petitioner also filed a maintenance case. From the evidence adduced by the Complainant in D.V.A. No. 1 of 2016 on the file of the learned Judicial Magistrate, Dharapuram, the learned Judicial Magistrate had granted relief on the ground that the Husband Respondent contracted a second marriage. However, such a plea was not raised by the Petitioner herein nor any evidence was produced to substantiate the same.



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Even otherwise, a Muslim man is permitted, as per his personal law, to contract a second marriage and there is no legal bar or embargo. Therefore, the Petitioner herself has not raised such an issue. Still the learned Judge had granted the relief only on the said ground which was not at all raised. But the Appellate Court, after hearing the arguments of both parties in Criminal Appeal No.132 of 2019, rightly reduced the monthly house rent as Rs.5,000/- and compensation was reduced to Rs.1,00,000/-. It was specifically recorded that the Petitioner herself admitted that she is residing in a house by paying rent of only Rs.2,000/- per month. In such circumstance, the grounds raised in the present Criminal Revision are without any merits. It is the Respondent who had raised both the minor daughters and the first daughter had completed her Chartered Accountant Course. The second daughter is pursuing her School education. That apart, the Respondent is also paying the maintenance amount of Rs.5,000/- per month.

10. It is the further contention of the learned Counsel for the Respondent/Husband that the children born to the Revision Petitioner and the Respondent are maintained by the Respondent. The deposition of the elder daughter recorded in O.S.No.330 of 2015 on the file of the learned District Munsif had been filed as a document in the typed set of papers, wherein she



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claims that she is a Chartered Accountant and her educational expenses have

been met by her father. It is further submitted that when the Respondent

performed the marriage of their elder daughter, the Petitioner herein, as a

mother, did not attend. The Respondent/Husband is earning his livelihood as a

Photographer. He has his own photo studio. Considering the technical

advancement in the photography field, the Photographers are not earning well.

They suffered a lot due to the thin footfall in the Studios. Taking note of the

entire evidence, the Appellate Court rightly reduced the compensation of

Rs.10,00,000/- as unreasonable taking note of the professional job of the

Respondent as a photographer, who is self-employed and who looked after the

needs of their two daughters. It was also recorded that the Respondent had

contracted a second marriage after divorce of the Petitioner. He also had to

take care of his family. It was also noted that two years after granting divorce,

the Revision Petitioner has filed the complaint invoking The Protection of

Women from Domestic Violence Act. Therefore, it is nothing but an abuse of

process of law and not maintainable. On the date of the filing of the D.V.C, the

only intention of the Revision Petitioner is to harass the Respondent and his

family members. The elder daughter who had attained the age of majority had

deposed in O.S.No.330 of 2015 as a witness by stating that her

mother/Revision Petitioner had not been cordial with her father. Only because



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of her adamant attitude they were separated. It was also deposed that the Revision Petitioner did not heed to the advice of the elders of the family and the well wishers. Therefore, her father had declared talaq against her mother the Petitioner. Also, by filing G.W.O.P. No. 143 of 2019 before the learned Principal District Judge, the Respondent had obtained custody of the two children in which visitation right alone was granted to the Revision Petitioner/wife. Under those circumstances, considering the financial constraints of the Respondent, the learned Principal District Judge had rightly allowed the Criminal Appeal 132 of 2019 in part, thereby reduced the monthly rent payable to the Revision Petitioner at Rs.5,000/- and the compensation Rs.10,00,000/- was reduced to Rs.1,00,000/-. The judgment of the learned Principal District Judge Tiruppur is a well reasoned judgment and it does not warrant any interference. Already the Revision Petitioner/wife is receiving maintenance amount of Rs.5,000/- and apart from the said payment, the Respondent is also paying another sum of Rs.5,000/- to her as per the order passed by the learned Principal District Judge, Tiruppur. The Respondent will not be able to pay such huge amount. Considering the fact that he had to meet out the expenses of his family consisting of three children, the two daughters born to the Revision Petitioner and the son born through the second wife, the learned Counsel for the Respondent sought for dismissal of this Revision



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petition as having no merits.

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Point for consideration:

Whether the judgment of the learned Principal District Judge, Tiruppur in Criminal Appeal 132 of 2019 is to be set aside and the order passed by the learned Judicial Magistrate Dharapuram in D.V.A.No.1 of 2016 dated 28.11.2019 is to be restored?

11. Heard the learned Counsel for the Revision Petitioner and the learned Counsel for the Respondent. Perused the typed set furnished by the learned Counsel for the Revision Petitioner containing deposition of both parties. Perused the typed set of the learned Counsel for the Respondent in which copies of the connected proceedings are also furnished. Perused the order passed by the learned Judicial Magistrate in D.V.A. No. 1 of 2016 dated 28.11.2019 and the judgment of the learned Principal District and Sessions Judge, in Crl.A. No. 132 of 2019 dated 08.07.2021 and also the grounds of the Criminal Revision.

12. Considering the fact that the Revision Petitioner is residing separately and her daughters having been maintained by the Respondent/Husband all along and taking note of the deposition of the



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Revision Petitioner in the cross examination in the maintenance case admitting that her daughter had completed Chartered Accountant course and she had been maintained by the Husband, the learned Appellate Judge, rightly reduced the compensation amount payable to the Revision Petitioner. Further, both the daughters of the Revision Petitioner had been maintained by the Husband out of his earning as a Photographer. The learned Principal District and Sessions Judge, Tiruppur taking note of the over all evidence available on record, reduced the compensation amount of Rs. 10,00,000/- to Rs.1,00,000/-. Similarly, the amount Rs.10,000/- ordered was also reduced as Rs.5,000/- considering the plight of the husband. Considering the fact that the maintenance had been ordered in the maintenance case filed by the wife in which the Respondent/Husband is also paying a sum of Rs.5,000/- and he also has to maintain his family consisting of his second wife and three children, the grounds raised in the present Criminal Revision seeking to restore the order of the learned Judicial Magistrate Dharapuram is found unacceptable. Considering the economic Status of the Husband, who is earning his livelihood as a Photographer and in the present days, there is a thin footfall witnessed in the photo studios due to advancement of technology, the plea raised by the Respondent-husband is found acceptable. The interest of the wife had been protected by the order passed by the learned Judicial Magistrate,



Dharapuram.

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13. As pointed out by the learned Counsel for the Respondent, if the judgment of the learned Principal District and Sessions Judge, Tiruppur is set aside, it will cause prejudice and miscarriage of justice. The interest of the Revision Petitioner is taken care of by the learned Judicial Magistrate, Dharapuram as well as the learned Principal District and Sessions Judge. The learned Principal District and Sessions Judge had balanced the income of the husband and rightly modified the quantum ordered by the learned Judicial Magistrate Dharapuram. In short, the judgment of the learned Principal District and Sessions Judge, Tiruppur is found well reasoned. Considering the circumstances highlighted by the Appellant in Crl.A.No.132 of 2019/Husband before the learned Principal District and Sessions Judge, Tiruppur, the quantum alone was modified and the order passed by the learned Judicial Magistrate, Dharapuram was modified. It was upheld in all other respects.

14. In the light of the above discussion, the point for consideration is answered in favour of the Respondent and against the Revision Petitioner. The judgment of the learned Principal District Judge, Tiruppur in Criminal Appeal 132 of 2019 is upheld and the order passed by the learned Judicial Magistrate



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Dharapuram in D.V.A.No.1 of 2016, dated 28.11.2019 is even though found proper, the quantum of compensation and quantum of monthly maintenance to the wife is found unreasonable considering the economic status of the husband the Respondent in the Domestic Violence Application who is the Respondent herein in this Revision.

16. In the result, **this Criminal Revision is dismissed.** The judgment of the learned Principal District Judge, Tiruppur, in Criminal Appeal 132 of 2019 modifying the order passed by the learned Judicial Magistrate Dharapuram in D.V.A. No. 1 of 2016 dated 28.11.2019, is confirmed.

03.03.2025

Shl
Index : Yes/No
Speaking/Non-speaking order

To

1. The Principal District Judge
Tiruppur
2. The Judicial Magistrate
Dharapuram.
3. The Section Officer,
Criminal Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J

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Order made in
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