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Crl.R.C. No.1088 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Revision Case No.1088 of 2021

and

Crl. M.P. No. 14007 of 2021

K.M.A. Zabira

.. Petitioner

Versus

A.S.M. Kader Hussain

.. Respondent

Criminal Revision Case is filed under Section 397 of Cr.P.C., praying to set aside the judgment dated 27.10.2021 made in Crl.A.No.33 of 2021 on the file of the learned Principal Sessions Judge, Chennai confirming the order dated 11.02.2020 passed in D.V.C. No. 211 of 2016 on the file of the Additional Mahila Court, Egmore, Chennai.

For Petitioner	:	Ms. Thenmozhi Shivaperumal
For Respondent	:	Mr. S.H. Syed Anwar

ORDER

This Criminal Revision Case is filed to set aside the judgment dated 27.10.2021 passed by the learned Principal Sessions Judge, Chennai in Crl. A.



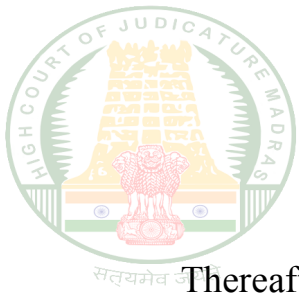
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No. 33 of 2021, confirming the order dated 11.02.2020 passed in D.V.C. No. 211 of 2016 on the file of the learned Metropolitan Magistrate, Additional Mahia Court, Egmore, Chennai.

2. The brief facts which are relevant for considering this Revision are as follows:-

2.1. The marriage between the Petitioner and the Respondent was arranged by the elders of both the families and it was solemnised on 08.12.1991 at Melapallivasal, Elayangudi. At the time of marriage, the parents of the Petitioner paid Rs.1,00,000/- as dowry and 40 sovereign of gold jewellery to the the Petitioner. According to the Petitioner, the Respondent did not go to any job. He spent his time in watching Television and led a wayward life. In the course of the matrimonial life, the Petitioner delivered a child on 05.10.1994. The Respondent/husband thereafter was employed as an Electrician. The father of the Petitioner, in order to help the Respondent, borrowed Rs.5,00,000/- and set up a business in paper & stationery business to the Respondent. However, due to the conduct of the Respondent, the business suffered loss and it was closed. Once again, the father of the Petitioner borrowed money and helped the Respondent to proceed with his business and this time also, it ended in loss due to the attitude of the Respondent.

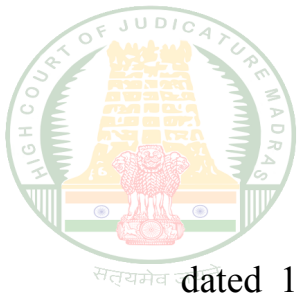


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Thereafter, the Respondent demanded money frequently from his father-in-law and exploited the Petitioner, received gold jewellery to meet the expenses of the family. After the second child was born, frequent quarrels erupted, during which, the Respondent ill-treated and abused the Petitioner physically and mentally. Meanwhile, the Petitioner's father died on 14.02.2015. The Petitioner in order to support her children took up many jobs, earned her livelihood and also provided for the education of the daughters. The Petitioner went as a Yoga Teacher and earned her livelihood. The first daughter joined B.E. in 2012 and completed the course. As the Respondent indulged in physically assaulting and harassing the Petitioner, she preferred a Complaint under the Provisions of Protection of Women from Domestic Violence Act, 2005.

2.2. Upon receiving the complaint, the Social Welfare Officer conducted enquiry and gave a report to the learned Metropolitan Magistrate, Egmore, Chennai. Based on the report, Domestic Violence Application was filed by the Petitioner and it was taken on file as D.V.C. No. 211 of 2016.

2.3. On service of summons, the Respondent entered appearance and filed counter. In the enquiry, the wife had given evidence. She had filed affidavit as examination-in-chief of the Petitioner. She was cross-examined on behalf of the Respondent. After enquiry, the learned Metropolitan Magistrate, Additional Mahila Court, Egmore, as per order in D.V.C. No. 211 of 2016,



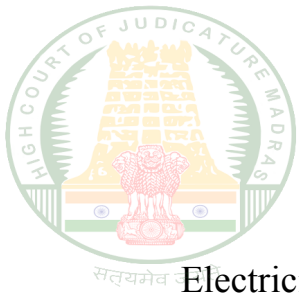
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dated 11.02.2020, rejected the claim of the Petitioner under several heads. Instead directed the Respondent to pay compensation of Rs.1,00,000/- (Rupees One Lakh) to the Petitioner.

2.4. Aggrieved by the order dated 11.02.2020, the Petitioner preferred Criminal Appeal No. 33 of 2021 before the learned Principal Sessions Judge, Chennai. After hearing the argument of both parties and on assessment of evidence, the learned Principal Sessions Judge, Chennai, dismissed the Appeal. Therefore, the present Criminal Revision Case had been filed before this Court by the Petitioner.

3. The learned Counsel for the Revision Petitioner submitted that the Revision Petitioner is the Wife. She had filed the Domestic Violence Case against the husband and her in-laws. The case against her in-laws, who are arrayed as Accused Nos. 2 and 3, was quashed by this Court in the order dated 09.08.2018 passed in Crl.O.P No. 8866 of 2017.

4. The learned Counsel for the Petitioner further submitted that the marriage between the Revision Petitioner and the Respondent took place in the year 1991. The first child was born in the year 1994. According to the learned Counsel for the Revision Petitioner, the husband, even though is an



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Electrician, does not go for a job. He enjoyed his time at home idle and watching Television. After the second child was born in the year 2001, dispute emanated between the Petitioner and the Respondent. At that time, the father of the Revision Petitioner borrowed Rs.5,00,000/- and set up a shop for the Respondent so that he could maintain the family. However, due to the conduct of the Respondent, the business faced loss and the shop was closed in the year 1992. Subsequently, the father of the Revision Petitioner borrowed money to the tune of Rs.2,00,000/- and paid it to the Respondent. Still the Respondent did not behave as a responsible husband. He used to pledge the jewels of the Wife for meeting the day to day expenses thereby the Respondent had drained all the jewellery given to the Petitioner by her parents at the time of marriage. When the Revision Petitioner questioned the activities of the Respondent, he abused her physically and mentally. Therefore, she was forced to give complaint, based on which the Protection Officer had conducted enquiry. When the Protection Officer issued notice, the Respondent/Husband appeared and gave an undertaking that he was able to pay Rs.3,000/- per month towards maintenance.

5. The Domestic Violence Case was filed by the Wife giving details of the Assets and Liabilities and also seeking monthly maintenance of



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Rs.6,000/- per month and compensation of Rs.15,00,000/- for the mental and physical abuse caused by the Respondent. During enquiry by the learned Metropolitan Magistrate, Egmore, Chennai, the Petitioner was examined as a witness. She was cross-examined as part of the enquiry. The Respondent had not entered the witness box. Also, the Protection Officer had filed the report. In spite of the same, the learned Metropolitan Magistrate, Egmore, Chennai by order dated 11.02.2020 refused to grant the relief sought by the Petitioner under several heads, particularly, the relief sought for under Sections 18, 19 and 20 of the Domestic Violence Act. The learned Metropolitan Magistrate, Egmore, Chennai, however, directed the Respondent to pay a meagre amount of compensation of Rs.1,00,000/- (Rupees One Lakh) to the Petitioner. Therefore, the Petitioner was forced to file Criminal Appeal No.33 of 2021 against the order in D.V.C. No. 211 of 2016. After hearing the learned Counsel for both sides, the learned Principal Sessions Judge, Chennai, by Judgment in Criminal Appeal No. 33 of 2021, dated 27.10.2021 had dismissed the Appeal. Aggrieved by the same, the Petitioner has filed the present Criminal Revision Case seeking to set aside the order of the learned Principal Sessions Judge and to consider the relief sought for by the Revision Petitioner before the learned Metropolitan Magistrate, Egmore, Chennai as per the provisions of the Domestic Violence Act.



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6. Per contra, the learned Counsel for the Respondent submitted that the learned Metropolitan Magistrate, Additional Mahila Court, Egmore, had in the order dated 11.02.2020 observed that *“As there is no Domestic relationship between the Petitioner and the Respondent, the Petitioner is not entitled for the relief under Sections 19, 20 of the Protection of Women from Domestic Violence Act.”* However, the Respondent was directed to pay compensation of Rs.1,00,000/- (Rupees One Lakh) for mental agony caused to her by him. Aggrieved over the same, the Petitioner herein had preferred Crl.A.No.33 of 2021 before the learned Principal Sessions Judge, Chennai. The learned Principal Sessions Judge, Chennai had observed that *“the very use of Domestic Violence Act itself appears to be mischievous in order to settle the score between the husband and wife. Considering the inordinate delay involved and separate living of the Petitioner at Chennai wantonly are all appears to be correct. The trial Judge, after assessing the demeanour of witness and nature of case, passed the order. Out of mercy, she has chosen to award a sum of Rs.1 Lakh as compensation. In case if the Petitioner and children needs maintenance, they can very well file application for maintenance u/s. 125 Cr.P.C., The maintenance was claimed before the wrong forum with invented story of domestic violence.”* It is also further held that *“if there is no domestic*



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relationship and domestic violence, maintenance cannot be passed in Domestic Violence Act. There is a separate forum available to seek maintenance from the husband as well as father of the children.” Aggrieved over the same, the Petitioner herein had filed this Criminal Revision.

7. The learned Counsel for the Respondent submitted that the Petitioner had not approached this Court with clean hands since she failed to enclose the copy of the decree of divorce as well as the counter filed by the Respondent in C.A. No. 33 of 2021. After getting a decree of divorce in O.S. No. 248 of 2015, the domestic relationship ceased to exist. In the absence of a domestic relationship, there is no Domestic Violence warranting the Petitioner to invoke the Provision of Section 12 of the Domestic Violence Act. When the Application filed under Section 12 of Domestic Violence Act is not sustainable, no order under Sections 19 and 20 of the Domestic Violence Act can be passed. The learned trial Judge had on proper appreciation of evidence arrived at a conclusion that the Petitioner is not an aggrieved person as defined under Section 2 (a) of the Domestic Violence Act. The factual finding regarding domestic violence may not be a subject matter of the present Revision since the Criminal Revision may not be invoked to alter the factual finding of the case.



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8. The learned Counsel for the Respondent further submitted that the ingredients of the domestic violence as defined under Section 3 of the The Protection of Women from Domestic Violence Act are not satisfied by way of oral as well as documentary evidence in trial Court. The learned Appellate Judge also confirmed the well-reasoned Order of the learned trial Judge. The Petitioner is not an aggrieved person and the alleged domestic violence in this case was not at all proved in order to seek the relief provided under Sections 19 and 20 of the Domestic Violence Act. The order passed by the learned Metropolitan Magistrate, Additional Mahila Court, Egmore, Chennai, and the judgment of the learned Principal Sessions Judge, Chennai, are well-reasoned Judgments which do not warrant any interference by this Court. Hence, this Criminal Revision lacks merits and is to be dismissed.

Point for consideration:-

Whether the judgment passed by the learned Principal Sessions Judge, Chennai in Crl.A.No.33 of 2021, dated 27.10.2021 is to be set aside as perverse?

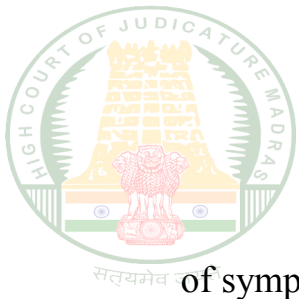
9. Heard the learned Counsel for the Revision Petitioner and the



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learned Counsel for the Respondent. Perused the order passed by the learned Metropolitan Magistrate, Additional Mahila Court, Egmore, Chennai and the Judgment passed by the learned Principal Sessions Judge, Chennai and the evidence of Prosecution viz., P.W-1 and the documents marked on the side of the Prosecution under Ex.P-1 to Ex.P-8.

10. On appreciation of evidence, the learned Metropolitan Magistrate, Additional Mahila Court, Egmore, Chennai, arrived at a conclusion that the averments in the Petition had not been proved. Therefore, the claim of Petitioner was rejected. The learned Metropolitan Magistrate, Additional Mahila Court arrived at a conclusion that the Petitioner/Complainant is not entitled to get any relief in the light of the fact that the averments in the complaint are not substantiated by any documents. Still, by way of sympathy, the learned Metropolitan Magistrate, Additional Mahila Court, Egmore, Chennai, had granted compensation of Rs.1,00,000/- (Rupees One Lakh) to the Petitioner. Aggrieved the Complainant/Petitioner preferred Criminal Appeal before the learned Principal Sessions Judge, Chennai. The learned Principal Sessions Judge, Chennai, rejected the Appeal and confirmed the order of the learned Metropolitan Magistrate, Additional Mahila Court, Egmore, Chennai by stating that the learned Magistrate had ordered compensation only by way



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of sympathy to the Petitioner even though she did not have any case to succeed before the Court. Therefore, the Complainant/Petitioner had come by way of Revision seeking to set aside the order of the learned Metropolitan Magistrate, Additional Mahila Court, Egmore, Chennai and the Judgment of the learned Principal Sessions Judge, Chennai dismissing the C.A.No.33 of 2021.

11. On consideration of the rival submissions, the submission of the learned Counsel for the Respondent/husband is found justified. On perusal of the evidence of the Petitioner in cross-examination, she stoutly denied that she had been residing in Chennai. The birth certificate of the children are issued by the Corporation of Chennai. Therefore, birth of the two children were at Chennai. She had been evading the specific question put as suggestion in cross-examination by the learned Counsel for the Respondent that they had been residing as husband and wife in various places within Chennai for the past several years. She had on her own volition, filed a Suit for divorce and on the basis of the evidence, the decree of divorce granted in her favour. Nowhere in the Petition, she had stated that she had filed a Suit for divorce. When the husband and wife are residing separately for the past nine years, the question of invocation of the provisions contained under The Protection of Women from Domestic Violence Act will not arise. Therefore, such a petition filed by



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the Petitioner is nothing but an abuse of process of law. The provisions of The Protection of Women from Domestic Violence Act are meant to protect those spouse who suffer bodily injury or mental harassment when they reside together. In the present case, after nine years of separation, the Petitioner had chosen to invoke the provisions of the Protection of Women from Domestic Violence Act, which cannot be countenanced.

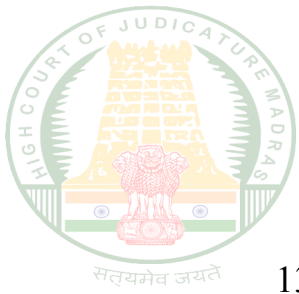
12. In O.S. No. 248 of 2015, an *ex parte* decree for divorce was granted by the learned Judge, Family Court in which it was stated that the wife had been residing separately. On such consideration, the learned Metropolitan Magistrate, Additional Mahila Court, Egmore, Chennai, instead of dismissing the Petition, allowed the Domestic Violence Case by granting compensation of Rs.1,00,000/- (Rupees One Lakh) payable to the Petitioner by the Respondent. Aggrieved by the same, she had preferred C.A.No.33 of 2021. After hearing arguments on both parties and on perusal of the evidence before the learned Principal Sessions Judge, Chennai, had dismissed the Appeal confirming the finding of the learned Metropolitan Magistrate, Additional Mahila Court, Egmore, Chennai. This being a Revision Court cannot sit as an Appellate Court to re-assess the evidence. Only on technicalities of law, the Revision Court can exercise its discretion. Here, in the course of evidence, it was found



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out that the Petitioner/Complainant in the Domestic Violence Case was not able to prove her contentions regarding Domestic Violence unleashed against her by the Respondent. It is the case of the Respondent/husband that he is earning his livelihood as an Electrician. The wife adamantly demanded Rs.20,000/- per month for the expenses when he is able to pay only Rs.3,000/- per month. Both the Courts had therefore arrived at a conclusion based on assessment of evidence that there is no Domestic Violence committed by the husband against the wife. In the absence of any Domestic Violence, the Complainant in the Domestic Violence Case is not entitled to get any maintenance. The submissions of the learned Counsel for the Revision Petitioner is therefore rejected in the light of the above facts available on records in this case. When the Petitioner had evaded question put to her that she had been living in Chennai and the children were born in Chennai she claimed ignorance by saying “எனக்கு தெரியாது” which shows that she does not want to admit facts and the truth as it is. Therefore, a person of such quality cannot be granted any relief. The trial Court as well as the Appellate Court had properly appreciated the evidence and rejected the claim of the Revision Petitioner.



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13. 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 dated 27.10.2021 made in Crl.A.No.33 of 2021 on the file of the learned Principal Sessions Judge, Chennai confirming the order dated 11.02.2020 passed in D.V.C. No. 211 of 2016 on the file of the learned Metropolitan Magistrate, Additional Mahila Court, Egmore, Chennai is found proper which does not warrant any interference by this Court.

In the result, **this Criminal Revision Case is dismissed** as devoid of merits. The judgment dated 27.10.2021 made in Crl.A.No.33 of 2021 on the file of the learned Principal Sessions Judge, Chennai confirming the order dated 11.02.2020 passed in D.V.C. No. 211 of 2016 on the file of the learned Metropolitan Magistrate, Additional Mahila Court, Egmore, Chennai is confirmed. Consequently, connected miscellaneous petition is closed.

26.03.2025

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



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To

- 1.The Principal Sessions Judge,
Chennai.
- 2.The Metropolitan Magistrate,
Additional Mahila Court,
Egmore, Chennai.
- 3.The Section Officer,
Criminal Section,
High Court Madras.



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SATHI KUMAR SUKUMARA KURUP, J

dh

Order in
Crl.RC No.1088 of 2021

26.03.2025