



C.R.P.(PD)No.5055 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.01.2025**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.5055 of 2023
and C.M.P.No.29404 of 2023

1.S.Saravanan
2.K.Subramanian
3.S.Poongavanam
4.S.Vadivazhagan
5.S.Madhiabhagan
6.S.Pandiyan
7.M.Gnanasowndari

.. Petitioners

Vs

R.Nirmala

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the dismissal order dated 13.10.2023 passed by the I Additional District and Sessions Court, Namakkal in CrI.M.P.No.1565 of 2023 in C.A.No.46 of 2022, which appeal is now pending.



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For Petitioners : Mr.S.Govindarajulu

WEB COPY For Respondent : Mr.T.Saikrishnan

ORDER

This civil revision petition arises against the order passed by the learned I Additional District and Sessions Judge, Namakkal in Crl.M.P.No.1565 of 2023 in C.A.No.46 of 2022, dated 13.10.2023.

2.The relationship between the parties is not in dispute. The 1st petitioner is the husband and the respondent is the wife. They entered into matrimony on 04.02.2001. From the wedlock, two children were born, who are aged about 23 & 20, respectively. The first born is a male child and the second born is a female child. Due to disputes and differences, the parties separated.

3.The husband presented F.C.O.P.No.180 of 2019 seeking divorce on the grounds of cruelty and adultery. Subsequently, F.C.O.P.No.180 of 2019 was decreed. Simultaneously, the wife presented D.V.C.No.19 of 2020 on the file of the Additional Mahila Court at Namakkal. She sought for several reliefs under the Domestic Violence Act. By an order dated 12.04.2022, the said domestic violence petition came to be allowed.



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4. Aggrieved by the same, the husband/1st petitioner along with his family members preferred an appeal, invoking Section 29 of the Domestic Violence Act, before the I Additional District and Sessions Court at Namakkal. This appeal was received as CrI.A.No.46 of 2022. Pending disposal of the appeal, the husband filed CrI.M.P.No.1565 of 2023. This was an application seeking to let in additional evidence under Section 391 of the Criminal Procedure Code. The said application came to be dismissed even in the SR stage itself.

5. Challenging the same, the husband invoked the jurisdiction of this Court, under Section 482 of the Cr.P.C., and presented CrI.O.P.No.29158 of 2022. After hearing both sides, the CrI.O.P. came to be allowed on 08.08.2023 directing the learned Additional District Judge at Namakkal to consider the application on its own merits and in accordance with law. This Court further directed, in case, the Appellate Court came to a conclusion that the documents are essential, it would give an opportunity to the wife to cross-examine the husband on those documents. Subsequently, the said CrI.M.P. was numbered as CrI.M.P.No.1565 of 2023. This application was opposed by the respondent/wife.



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6.The learned Appellate Judge, after considering the affidavit and counter, came to a conclusion that the petitioners have not made out a case and dismissed the said petition. Hence, the present civil revision petition.

7.I heard Mr.S.Govindarajulu for the civil revision petitioners and Mr.T.Saikrishnan for the respondent/wife.

8.Mr.S.Govindarajulu pleads that when the matter was pending before the Trial Court at Namakkal, he was afflicted with Covid-19 and therefore, was laid up in bed. His junior colleague, who was handling the brief, did not file the records, which he seeks to introduce by way of the miscellaneous petition. He states the records will disclose that the husband is only working as a tailor and is only earning Rs.540/- per day and therefore, to call upon him to pay the whopping sum as fixed by the learned Additional Mahila Judge in the D.V.C. proceedings would be unfair. He pleads it is only on account of the fact he fell sick, the documents could not be presented before the Trial Court. If an opportunity is granted to the husband, he will certainly establish the relevancy and admissibility of those documents in the proceedings.



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9.Per contra, Mr.T.Saikrishnan pleads that the husband is dragging on the matter at every stage of the proceedings. He states, the fact that there has been a decree of divorce between the parties is irrelevant as all these issues had been gone into by the Trial Court and an order had been passed in terms of the Domestic Violence Act. He states that the appeal was presented in the year 2022 and on account of the miscellaneous petition and the orders passed therein, it is still languishing without the wife being able to see the disposal of the case.

10.I have considered the submissions of both sides. I have carefully gone through the entire records.

11.A Full Bench of this Court in *Arul Daniel v. Suganya, (2022) SCC OnLine Mad 5435* has held that the domestic violence proceedings are civil in nature till a proceeding is initiated under Section 31 of the Domestic Violence Act. When the order was passed by this Court, though a reference was made to Section 391 of the Cr.P.C., since the proceedings are civil in nature, the appropriate provisions that will apply is Order XLI Rule 27 of the Civil Procedure Code.



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12.In *Union of India vs. Ibrahim Uddin and another*, (2012) 8

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SCC 148, the Supreme Court had directed, where additional evidence is sought to be introduced in an appeal, then the Court should consider the said application along with the appeal. If at the time of disposal of the appeal, the Court is of the view that the documents would be essential, the Court can always receive it subject to the right of cross-examination of the other side. When the appeal is governed under Section 29 of the Domestic Violence Act and an application is filed for receiving additional evidence in terms of Order XLI Rule 27 of the CPC, dealing with the application, independently of the appeal, cannot be but held as erroneous. I am able to perceive, the learned Judge took up the application independently on account of the direction that was passed by this Court in CrI.O.P.No.29158 of 2022. Since the judgment of the Full Bench has intervened, I am constrained to interfere with the order of the Appellate Court.

13.The civil revision petition stands allowed on the following terms:

(i) The order passed by the learned I Additional District and Sessions Judge at Namakkal in CrI.M.P.No.1565 of 2023 in C.A.No.46 of



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2022 dated 13.10.2023 is set aside.

WEB COPY (ii) CrI.M.P.No.1565 of 2023 will stand restored to the file of the I

Additional District and Sessions Court at Namakkal.

(iii) The learned Judge shall hear the appeal and at the time of disposal of the appeal, in case, he feels the additional documents would assist him for the disposal thereof, he shall receive the same subject to the right of the cross-examination of the respondent/wife.

No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

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Speaking order/Non-speaking order

Neutral Citation : Yes/No

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To

I Additional District and Sessions Court,
Namakkal.



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V. LAKSHMINARAYANAN,J.

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