

Jeyanthi Vs. Jeyapaul

Jeyanthi Vs. Jeyapaul

SooperKanoon Citation : sooperkanoon.com/1178775

Court : Chennai Madurai

Decided On : Oct-15-2015

Judge : The Honourable Mrs. Justice S. Vimala

Appeal No. : Crl.R.C.(MD) No. 138 of 2014

Appellant : Jeyanthi

Respondent : Jeyapaul

Judgement :

(Prayer: Criminal Revision Petition has been filed under Sections 397 and 401 of Cr.P.C., to call for records in Crl.A.No.76 of 2012 on the file of the learned II Additional Sessions Judge, Thoothukudi, Thoothukudi District and set aside the judgment dated 26.11.2013, confirming the order dated 26.08.2011 passed in M.C.No.5 of 2010 on the file of the learned Judicial Magistrate No.1, Thoothukudi, Thoothukudi District.)

1. Alleging violence in domestic relationship, the aggrieved party, namely, the wife filed a complaint against the husband under Section 12 of Protection of Women from Domestic Violence Act (hereinafter referred to as the P.W.D.V.Act ?) before the Judicial Magistrate No.I, Thoothukudi.

2. The Court, after conducting enquiry, gave a finding that the allegation of domestic violence is not proved and that the claim of maintenance should be made in an appropriate Court. Challenging the same, the wife filed appeal before

the Sessions Judge in Crl.A.No.76 of 2012. The order passed by the learned Magistrate in M.C.No.5 of 2012 dated 26.08.2013, was confirmed by the Sessions Judge, by the judgment dated 26.11.2013. This judgment is under challenge in this revision petition.

3. While confirming the order of the learned Magistrate, the Appellate Court considered the financial supports rendered by the husband to the wife and his child, which are as follows;

a) the wife herself admitted that her husband met the education expenses of the daughter upto her studies in XII standard.

b) the husband provided 25 sovereign of jewels to her and daughter

c) medical facility was provided to her and daughter through the company in which the husband was employed;

d) at the instance of Police at Pudukottai Police Station, the husband was made to pay Rs.400/- to the petitioner, but she refused to receive the same.

e) the wife is receiving a sum of Rs.900/- per month by letting the upstairs portion of the house on rent;

4. The husband stated in his evidence that he met the educational expenses of his daughter and remitted the fees at Kalasalingam University and in support of the same, documents were filed. Giving a finding that as per Section 20 of the P.W.D.V.Act, an aggrieved person can claim the relief of maintenance, as a result of domestic violence, but domestic violence in this case is not proved, the dismissal was held proper.

5. In order to appreciate the merits of the judgment passed, it is necessary to look into the details of the petition filed by the wife.

6. The wife filed a petition under Section 12 of the P.W.D.V.Act, 2005, seeking the following reliefs:

- i) to pass protection order prohibiting the respondent from committing any act of domestic violence either physically or mentally against her and daughter;
- ii) to pass a residence order, making provision for residence at the house, where the petitioner was residing.
- iii) to pass maintenance order for the petitioner and her daughter at Rs.10,000/- per month from the respondent.

Facts in brief:

7. The marriage between the parties took place on 08.12.1983. After marriage, they were living at Thoothukudi and a female child born during the year 1992 is alive and other two children born during the year 1985 and 1988 died. When she was pregnant, uterus operations were done and at the time, she was treated cruelly by the respondent.

7.1. The respondent had illegal intimacy with his brother's wife and on account of that, she was treated cruelly.

7.2. The respondent is working as Labour in Tuticorin Port Trust and earning Rs.22,000/- as salary, but he did not give money for the maintenance of the petitioner and her daughter. The respondent is also earning a sum of Rs.27,000/- from his agricultural land.

8. On 03.05.2008, the petitioner was beaten and injuries were caused to her and hence, she gave a complaint to Sipcot Police Station and a case was registered in Crime No.103 of 2008 under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act. The husband filed a petition for divorce before the Sub Court, Thoothukudi on 07.05.2008 and later on, he withdrew the petition.

9. This petition, alleging domestic violence, was opposed by the husband as pregnant with false allegations; the alleged domestic violence is denied as false; the statement regarding income is an exaggerative one; the husband provided 25 sovereign jewels to the petitioner and her daughter and also provided a house, which was built by him worth Rs.8 lakhs and also provided household articles,

apart from meeting all the educational expense of her daughter.

10. The petitioner gave complaint of dowry harassment falsely on three times against the respondent. During enquiry, the husband was asked to pay Rs.400/- per month to the wife, which was refused by her. About 5 years back, it was only the wife, who pulled and pushed the respondent and caused verbal and physical injury. She used to quarrel for nothing and use abusive languages. Unable to bear the cruelty, he sent a notice through Advocate on 10.01.2008. During the enquiry made by the Sipcot Police, the petitioner admitted her activities and assured to stop that, but she never stopped. Therefore, the respondent filed a petition for divorce in HMOP 40 of 2010 before Sub Court, Thoothukudi.

11. The wife examined herself as P.W.1 and the two documents marked were Ration Card and receipt for payment of college fees. On behalf of the respondent, he has been examined as R.W.1 and the documents marked are the receipt for having given a complaint along with the copy of the complaint apart from the salary certificate of the respondent.

12. The main contention of the learned counsel for the revision petitioner is that the complaint given by the wife has been registered by the Police, would remain as a proof for domestic violence and therefore, the order passed by the Courts below is liable to be set aside.

13. On the other hand, learned counsel for the respondent would submit that whether the complaint given by the wife was on account of the fact that the wife was an aggrieved party seeking redressal or whether the complaint was an outcome of making the husband as an aggrieved party to wreck vengeance against him is a matter for enquiry / trial and therefore, mere registration of the case alone would not amount to proof of domestic violence. This contention merits acceptance. The enquiry / trial alone would unearth the real facts.

14. In view of the rival contentions raised, the following issues arise for consideration.

i) whether there was any domestic violence to the wife

ii) whether economic violence also would amount to domestic violence? If so, whether has the wife proved domestic violence.

15. The word Domestic Violence has been defined in the P.W.D.V.Act, 2005. The P.W.D.V.Act creates three basic rights for victims of domestic violence.

a) right to be protected from violence

b) right to live in a shared household

c) right to monetary relief

16. The Act provides for very comprehensive definition of domestic violence and includes not only actual abuse, but threatened abuse that may be either physical, sexual, verbal, economical or emotional.

17. It is also a gender specific enactment, which means only woman can avail the provisions of this Act. The Act clearly defines an aggrieved person as any woman who is, has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the husband... ?

18. Respondent has been defined to mean any adult male person, who is or who has been in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought relief.

18.1. The term economic abuse has been defined in Clause 2(ix) as including,

a) the unreasonable deprivation of economic or financial resources to which a complainant is entitled under law or which the complainant requires out of necessity, including household necessities for the complainant and mortgage bond repayment or payment of rent in respect of shared residence or

b) the unreasonable disposal of household effects or other property in which the complainant has an interest.

3(iv) economic abuse includes:-

(a)deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b)disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c)prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household. Explanation II. "For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes domestic violence under this section, the overall facts and circumstances of the case shall be taken into consideration. ?

19. The definition of domestic violence itself clearly spells out that it is not necessary that the aggrieved person has to be ill-treated and assaulted by the respondent to constitute domestic violence. Any continuous deprivation of economic resources and prohibition as defined under Section 3 (iv) of the Domestic Violence Act comes within the purview of Domestic Violence (K.Ramaraju vs. Lakshmi Prathima, 2008 2 ALD Cri.1).

20. The learned Magistrate, without understanding that the deprivation of economic resources to which the petitioner is entitled to, may amount to domestic violence, has given a finding that the petitioner can separately file a petition for maintenance. The rationale behind this decision is certainly incorrect. But the question to be seen is whether the petitioner is entitled to maintenance under the context, conduct and the circumstances alleged.

21. It is a case where the respondent herein as a father, has made his daughter a professionally qualified personality having educated her upto B.Tech. Even before the claim for maintenance, the respondent has provided shelter, medical facilities, educational facilities, rental income etc. Apart from that, as per the compromise, suggested by the Police Official, he was willing to pay a sum of Rs.400/- per month at that point of time, but the wife was not willing to receive it. In a house built by the husband on obtaining loan, it is the wife and daughter, who were residing and getting rent also by letting out one portion, while the husband is staying away from his own house. These details are not at all stated by the petitioner in chief examination and these facts have been brought out only in cross examination.

a) Suppression of material fact in a case between the husband and the wife involving intimate interpersonal relationship itself would amount to cruelty.

b) Neglecting the husband, treating him as invisible, not inviting him for the marriage of his daughter, where throughout the daughter has been supported by the father, certainly would amount to humiliation causing mental cruelty to the husband. The provisions of Domestic Violence Act can be used as a shield / sword to get protection from the domestic violence and it cannot be used as a sword for the purpose of causing violence to the other partner in the life.

22. There are three allegations levelled by the wife against the husband. So far as the 1st allegation is concerned, the incident is said to have taken place around 1985 to 1988 during which she is stated to have been ill-treated after uterus operation. The manner in which the ill-treatment caused is not explained. The allegation is vague.

23. The 2nd allegation is that the husband was maintaining illegitimate intimacy with his brother's wife. The Trial Court has said that no documents have been filed to prove it. The Court has given a finding that nobody else excepting the petitioner has been examined to prove the same. At least some near relatives could have been examined to speak about the probability of the allegation levelled.

24. So far as the 3rd allegation is concerned, it is pertaining to non providing of maintenance to the wife and child.

25. It is appropriate to quote Section 20 of the P.W.D.V.Act, providing for monetary relief: 20. Monetary reliefs. ”

(1)While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include but is not limited to ”

(a)the loss of earnings;

(b)the medical expenses;

(c)the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d)the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2)The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3)The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4)The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5)The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub section (1).

(6)Upon the failure on the part of the respondent to make payment in terms of the order under sub section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent. ?

26. Perusal of Section 20 of P.W.D.V.Act would go to show that monetary relief including maintenance can be given to the woman, who is proved to be the victim of domestic violence. In the absence of the proof regarding domestic violence, the wife is not eligible to claim maintenance.

27. As already indicated, the husband has provided several facilities, which has neither been disclosed in the evidence nor acknowledged in the complaint / petition. In all fairness, if the wife had stated that what was already provided was insufficient and what is the remaining amount of maintenance expected, it would have been fair. Now, the contention is raised with regard to justifiability of the wife to remain away from the company of the husband.

28. Mere registration of a complaint will not amount to proof of cruelty, as registration of the First Information Report is towards the first step to investigate and to fine out whether the allegation stated in the complaint is true or not.

29. When a query was raised with regard to the possibility of settlement either in terms of reunion or in terms of separation by mutual consent, having regard to the fact that already 30 years had elapsed, the parties having spent more time in Police Station and Court than at home, it was represented on the side of the wife that what is expected is only the order from the Court.

30. It is the case of the husband that she was always interested in humiliating the husband and was interested in seeing that the child is not affectionate towards the father; there was an intimidation to commit suicide often; levelling allegations; the

husband was lavish in spending money; interested in preferring complaints before the Police Station; the wife frequently leaving the house without information; using abusive language against the husband etc.

31. In disputes relating to family matters, by analyzing a single incident, a Court cannot come to a definite conclusion. Only considering the totality of the facts and circumstances, Court will be able to find out what would have happened. The totality of the circumstances in this case indicates that the probability is, the case of the husband must be true, when the wife admits that she has preferred 15 complaints before various police station.

32. There is no clarification as to what made the wife to prefer 15 complaints. The details ought to have been clarified and it has not been done. However, everyday life must be at home and not in the Police Station.

33. Considering the facts and circumstances of the case, this Court finds nothing to interfere with the concurrent orders passed by the Courts below. The petitioner has not proved the alleged domestic violence as against her. This Court is conscious of the fact that provisions of the P.W.D.V.Act is a legislation providing for justice to victim. It is appropriate to quote the decision of the Hon'ble Supreme court, reported in 1984 AIR 1471 (Sadhuram Bansal vs. Pulin Behari Sarkar and Ors.):

In our opinion, there appears to be some misapprehension about what actually social justice is. There is no ritualistic formula or any magical charm in the concept of social justice. All that it means is that as between two parties if a deal is made with one party without serious detriment to the other, then the Court would lean in favour of the weaker section of the society, Social justice is the recognition of greater good to larger number without deprivation of accrued legal rights of anybody. If such a thing can be done then indeed social justice must prevail over any technical rule. It is in response to the felt necessities of time and situation in order to do greater good to a larger number even though it might detract from some technical rule in favour of a party. Living accommodation is a human problem for vast millions in our country. The owners, in this case, are getting legally Rs. 1 lakh more.

We must remember that in administering justice-social or legal jurisprudence has shifted away from finespun technicalities and abstract rules to recognition of human being as human beings and as human needs and if these can be fulfilled without deprivation of existing legal rights of any party concerned, courts must lean towards that and if the Division Bench of the High Court, in the facts and circumstances of the case, has leaned towards that, it is improper for this Court in exercise of the discretion vested under Art. 136 of the Constitution to interfere with that decision. We would do well to remember that justice-social, economic and political-is preamble to our Constitution. Administration of justice can no longer be merely protector of legal rights but must whenever possible be dispenser of social justice.

Call it social justice or solving a socio-economic problem or give it any other name or nomenclature, the fact of the matter is that this was the best course in the circumstances that could have been adopted by the court. Unfortunately, the Single Judge completely ignored the following important facts which have been indicated by me earlier:-

(1) that a bulk of the consideration money, viz., Rs. 3 Lakhs out of Rs. 4 Lakhs, was not paid by the appellant even until the time when the learned Single Judge had passed the order nor was it paid even when the matter was in the High Court, and (2) the learned Single Judge overlooked the fact that an owner also has a right to impose certain conditions and in exercise of that he had imposed the condition that the purchaser would have to buy the land subject to the pending litigation whereas in the offer made by the purchaser he had placed the onus on the owners to give him a good marketable title free from litigation. ?

34. It would be appropriate to extract Section 20 of the Domestic Violence Act as under:

20. Monetary reliefs.-(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,-

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

35. From the provisions of Section 20(1)(d) of the P.W.D.V. Act, it is clear that the grant of maintenance under this Act is in addition to the amount awarded under any other enactment providing for maintenance. Therefore, even though the revision petitioners is not granted any maintenance, it is open to her to work out her remedy before any other law if found eligible.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com