

(2010) 08 MAD CK 0050

In the Madras High Court

Case No : Criminal R.C. (MD) No's. 1133 of 2008 and 400 of 2009 and M.P. (MD) No. 2 of 2010

Murugan, Meenakshi, Pitchai and Lakshmi

APPELLANT

Vs

Kasimani
Kasimani Vs Murugan, Meenakshi, Pitchai and Lakshmi

RESPONDENT

Date of Decision : 19-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200

Protection of Women from Domestic Violence Act, 2005 — Section 12, 12(1), 23, 26

Citation : (2012) 2 JCC 1202 : (2011) 4 RCR(Civil) 725 : (2011) 4 RCR(Criminal) 499

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : V. Thirumal, in Criminal R.C. MD No. 1133 of 2008 and A. Santhanam, in Criminal R.C. MD No. 400 of 2009, for the Appellant; A. Santhanam in Crl. R.C. (MD) No. 1133 of 2008 and V. Thirumal in Crl. R.C. (MD) No. 400 of 2009, for the Respondent

Final Decision : Allowed

Judgement

S. Palanivelu, J.—For the sake of convenience, the names of the parties as mentioned in the complaint filed before the Judicial Magistrate

Court are referred to in this order.

2. The following are the allegations contained in the complaint filed by the complainant u/s 12 of The Protection of Women from Domestic

Violence Act, 2005 (for short "the Act") and Section 200 Code of Criminal Procedure :

2(i). The first respondent is the elder brother of the complainant. The second respondent is his wife. The third and fourth respondents are father-in-

law and mother-in-law of the first respondent. The parents of the complainant

are no more. They have got two sons and five daughters. Everybody got married excepting this complainant. This complainant has been working as a daily wage coolie in a private banian company in Oranganpatti. She had been earning a sum of Rs. 2,000/- per month for about ten years and she had given the entire amount of Rs. 2,40,000/- to the first respondent. He also changed his name in the revenue records with reference to 11/2 acres belonging to their mother without her knowledge, in which, he has been cultivating, thereby, he is receiving Rs. 25,000/- per annum. The tiled house in which he is residing stands in their mother's name which is worth about Rs. 1,50,000/-. In the said house, the complainant has got share, but the first respondent got mutated his name for the assessment.

2(ii). About ten months back, the first respondent sold 50 cents of lands situated in Chettiyar Vayal Kadu, got Rs. 1,50,000/- and all the brothers and sisters excepting this complainant divided the same. The first respondent represented that the share of Rs. 35,000/- belonging to the complainant would be retained by him for her marriage expenses.

2(iii). The complainant was pressurised by the second respondent to attend to all the household duties and also threatened her to leave the house.

She also abused the complainant by uttering words which hurt her feelings. The first respondent had not taken any steps for the marriage of the complainant. The first respondent, at the instigation of the respondents 2 to 4, assaulted, abused and harassed her and the complainant used to go to her elder sister's house then and there. The third and fourth respondent also stayed in the house of the first respondent and forced the complainant to do errand duties and they also refused to provide food to her. They also asked her to elope with somebody else, otherwise to commit suicide after consuming poison.

2(iv). At the instigation of the respondents 2 to 4, the first respondent scolded the complainant with obscene words, assaulted her and necked her out from the house shouting that she should run away from the house after throwing her belongings on the street and further abused that if she returned back, they would burn her. Hence the complainant laid a complaint before the Karuppayurani Police Station. But, no steps were taken by the police stating that it was a civil case. Presently, the complainant is residing

temporarily in her sister's house. The first respondent, obliging the words of the other respondents, is refusing to provide facilities and do the duties lawfully to be done to the complainant. Hence, necessary enquiry may be held and a sum of Rs. 5,00,000/- may be directed to be paid by the respondents to the complainant.

2(v). The learned Judicial Magistrate recorded sworn statement of the complainant on 12.03.2008, took the case on file and acted in accordance with the provisions of the Act. The District Welfare Officer was nominated as Protection Officer, who submitted a report before the Court below on 17.04.2008 after enquiring the complainant and the second respondent. The respondents in the complaint had not appeared before the Court at the time of final hearing. The learned Judicial Magistrate passed orders on 20.05.2008 directing the first respondent to pay a sum of Rs. 5,000/- per month to the complainant as monthly maintenance. Aggrieved against this, the respondents preferred appeal in C.A. No. 60 of 2008, on the file of the Principal Sessions Court, Madurai, and the appeal was allowed in part on 29.10.2008 modifying the direction to the effect that the first respondent shall pay Rs. 2,000/- to the complainant as monthly maintenance. The said judgment is challenged before this Court.

3. Mr. V. Thirumal, learned Counsel appearing for the respondents in the complaint would contend that the learned Judicial Magistrate has miserably failed to take note of the Domestic Incident Report filed by the Protection Officer, that the first respondent is an agricultural coolie who is earning Rs. 2,000/- only per month as evident from the Certificate issued by the Tahsildar Office, Madurai, that had the report been considered by the learned Judicial Magistrate, he would not have passed such order and that necessary opportunities were not extended to these respondents.

4. Per contra, Mr. A. Santhanam, learned Counsel appearing for the complainant would contend that the Appellate Court has justified the judgment passed by the trial Court, that the other circumstances have been taken note of by the learned Judicial Magistrate as mandated by the Act and that the judgment of the Appellate Court does not call for any interference by this Court.

5. This Court has gone through the judgments of the Courts below carefully. The learned Appellate Court Judge has followed a decision of this

Court reported in 2008 (1) MWN 358 (M. Palani v. Meenakshi), in which the learned Judge has dealt with various provisions of the Act and

observed that when any order is sought for u/s 26 of the Act, there is no need for the report of the Protection Officer and that the provision does

not contemplate the report from the Protection Officer.

6. But the facts available in this case are otherwise. Proviso to Section 12(1) mandates the Judicial Magistrate to take into consideration the

Domestic Incident Report. The following is the proviso to Section 12:

12. Application to Magistrate.-(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present

an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall taken into consideration any domestic incident report received by

him from the Protection Officer or the service provider.

7. In the present case on hand, already the Protection Officer was nominated by the Court to enquire the parties and file the report, which was

marked before the trial Court as Ex.P5. Even then, the contents of which were not mentioned nor appreciated in the order passed by the learned

Judicial Magistrate. It has been referred that it was filed and the Trial Court has proceeded further without discussing the contents of the report.

8. The Domestic Incident Report produced by the Protection Officer would show that the complainant was examined and she stated as per the

allegations in her complaint. The Protection Officer examined the second respondent Meenakshi who had denied all the allegations levelled against

her in the complaint, further adding that the respondents did not ill-treat the complainant, that she did not stay in the house for a long time, that she

was living in her sister's house, that she did not pay any amount to her, that a sum of Rs. 2,45,000/- which was the sale proceeds given to her

elder sister Lakshmi, that marriage expenses were given by these respondents to the complainant in the presence of elders and that she is being

harassed by sisters and brothers of the complainant.

9. Even though specific denials are available in the report of the Protection Officer as above stated, which was very much available before the

learned Judicial Magistrate, he did not take into consideration and deal with in the order as required by proviso to Section 12(1) of the Act. Only if

the report is considered and necessary opportunities be extended to the parties concerned, the truth will come out.

10. It is incumbent upon the trial Court to go through all the materials available before it and to come out with a considered opinion. Section 23 of

the Act does not apply to the present case since the order challenged is not an interim order but it is a final order. A scheme has been formulated

u/s 23 of the Act to provide interim relief to the aggrieved person. As far as Section 23 of the Act is concerned, it deals with the relief available to

the aggrieved persons in other suits and legal proceedings. When the Judicial Magistrate Court is dealing with any application filed by the aggrieved

persons u/s 12(1) of the Act, it shall necessarily follow and act in accordance with the Proviso viz., considering the Domestic Incident Report from

the Protection Officer or the service provider and in default, any order passed by the Court would get vitiated.

11. In view of the above said observations, I am of the considered view that the case has to be remitted back to the trial Court for consideration of

the Domestic Incident Report and the Trial Court shall act in accordance with the provisions of the Act. Hence, the orders passed by the Courts

below are liable to be set aside and accordingly set aside.

12. In the result, both the revisions are allowed setting aside the orders of the Courts below and the matter is remitted back to the Trial Court for

consideration of the Domestic Incident Report and for acting in accordance with the provisions of the Act. The learned Judicial Magistrate No. II,

Madurai, is directed to dispose of the petition within thirty days from the date of receipt of a copy of this order. Consequently, connected

miscellaneous petition is closed.