

IN THE COURT OF THE III ADDITIONAL DISTRICT AND SESSIONS
JUDGE, COIMBATORE

Present : Tmt. S. PADMA, M.L.,
III Additional District & Sessions Judge,
Coimbatore.

Thursday, the 24th day of February, 2022.

[Thiruvalluvar Andu 2052 Sree Plava Varudam Masi Thingal 12th]

CRIMINAL APPEAL No. 181 of 2021
(CNR.No.TNCB01-008365-2021)

1. From what court the appeal is preferred	: Judicial Magistrate, Spl. Court for Trial of Domestic Violence Act Cases, Coimbatore.
2. Number of the case in that court	: D.V.A. No. 70 of 2019
3. Number of the appeal	: C.A. No. 181 of 2021
4. Name and description of the Appellant/petitioner	: Tmt. Devi (38/21) W/o. M. Viswanathan
5. Name of Respondents/ respondents	: 1. Tr. M. Viswanathan (41/21) S/o. Maruthachalam 2. Tmt. Bagyalakshmi (Since Died) W/o. Maruthachalam 3. Tr. Maruthachalam (65/21) S/o. Thannasiappa Gounder

This Criminal Appeal coming on 07.02.2022 for final hearing before me with Thiru R. Arunachalam, Advocate appearing for the appellant/petitioner and though notice served respondents 1 & 3 did not appear and upon hearing the arguments of the appellant/petitioner, perusing the case records and this matter having stood over for consideration till this date, this court delivers the

following

J U D G M E N T

1] The appeal is filed by the appellant/petitioner praying this court to set aside the order dated 01.11.2021 passed in D.V.A. No.70 of 2019 on the file of the Judicial Magistrate, Spl. Court for Trial of Domestic Violence Act Cases, Coimbatore.

2] The lower court has taken the complaint on file under Section 12 of Domestic Violence Act 2005. When posted for an enquiry on 01.11.2021 made the following orders " *the petitioner absent, respondent absent, both side counsels present petition under section 309 Cr.P.C. filed in CMP. No. 23565 of 2021 is dismissed* ". Challenging the same, the petitioner has come up before this court with this appeal.

Grounds of Appeal:

3] The appellant filed petition under section 12 of Protection of Women from Domestic Violence Act 2005 against the respondents for protection order, for return of Sridhanaa, maintenance, compensation etc. The case was taken on file as D.V.A. No. 70 of 2019 by Judicial Magistrate No.5, Coimbatore and was transferred to Special court for trial of Domestic Violence Act cases Coimbatore and was pending there from 08.11.2019 to 01.11.2021. Due to

Covid-19 Pandemic the case was adjourned from time to time and at last it was posted for enquiry on 01.11.2021. On that day the appellant was unwell and she was suspected of covid-19 infection and was admitted for medical examination. Because of that she did not appear before the lower court and so a petition under section 309 of Cr.P.C., was filed seeking adjournment. The lower court dismissed the same and consequent to that dismissed the main petition for default. The said act of lower court is unmindful. The appellant's absence on 01.11.2021 is neither wilful nor wanton. She got an advice that she is having fair chance to succeed in the DVA if enquiry is conducted. Hence, this appeal may be allowed the order of lower court in D.V.A.No. 70/2019 may be set aside.

4] The point for consideration in this appeal is whether for the grounds stated in this appeal the same is to be allowed and an order for restoration of DVA No. 70 of 2019 to file is to be passed ?

5] This court has gone through the records received from the lower court. A fair consideration of the same shows that in the main DVA the respondents entered appearance and among them the deceased respondent No.2 and the respondent No.3 filed counter on 17.08.2021 and the 1st respondent remained exparte and the case was posted for enquiry on 15.09.2021. The notes paper

entries in DVA 70 of 2019 show that the case was adjourned from 15.09.2021 to 17.10.2021 and at last to 01.11.2021 for enquiry. Among the above three dates on 15.09.2021 the appellant was absent and the respondent counsel alone was present and for enquiry it was adjourned. As per notes paper entry on 17.10.2021 though petitioner was present on her petition u/s. 309 of Cr.P.C., the case was adjourned to 01.11.2021 for enquiry. And on that day also a similar petition was filed and it was dismissed. The notes paper entries further show that on 01.11.2021 no order for dismissal of the main DVA was passed. The trial court has dismissed a petition filed under section 309 of Cr.P.C., numbered as 23565/2021. Consequent to that trial court has not dismissed the main DVA. Any how, the said order itself shows that the intention of the trial court was to dismiss the main DVA for non prosecution. The appellant now challenges the order of lower court dated 01.11.2011 by stating that through the same the main DVA was dismissed.

6] The appellant further contends that the lower court has failed to consider that her absence on 01.11.2021 is neither wilful nor wanton. While looking at this submission this court has gone through the reasons stated in CMP. No. 23565 of 2021. In the same it is stated that the petitioner suspecting a covid infection was under medical examination and so she could not appear. Though, November 2021 the 2nd wave of covid -19 was not on the peak there were

covid-19 cases. And further, in the petition it is not stated that the petitioner was a covid patient then. If it is stated that the petitioner was having a covid-19 infection then she would have got medical records to prove the same. A covid -19 suspect could not have records. And further, a person fearing Covid-19 infection would be advised to remain in doors. And he is supposed not to come to public places. When that be the case the petitioner on this ground could not have attended court for enquiry on 01.11.2021.

7] The lower court considering this point could have given one more adjournment and if she failed to attend the next hearing it could have dismissed the petition. Of course, a special court for trial of cases under Protection of Women from Domestic Violence Act 2005 has to fast track the enquiry but, the ultimate aim should be to do justice. In this case, the lower court has failed to pass an order dismissing the main case. This itself shows that the lower court has dismissed the petition hurriedly. The lower court's failure to consider the plight of the appellant is unfortunate. This court is of the view that appellant can be given a chance to proceed with the DVA.

In the result,

The APPEAL IS ALLOWED and the order dated 01.11.2021 passed in D.V.A.No. 70 of 2019 by the Judicial Magistrate, Spl. Court for Trial of

Domestic Violence Act Cases, Coimbatore is hereby SET ASIDE and the DVA No. 70 of 2019 is ordered to be restored to file.

Dictated to Steno-Typist, directly typed by her in computer, corrected and pronounced by me in Open Court, this the 24th day of February, 2022.

Sd/- Tmt. S. Padma, M.L.,
III Additional District and Sessions Judge,
Coimbatore.

*Copy to
The Judicial Magistrate No.1
Pollachi.*

*DRAFT/COPY/FAIR JUDGMENT
C.A.NO. 181 of 2021
DT: 24.02.2022
III ADJ, CBE.*

