



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12..2013

THE HON'BLE MRS.JUSTICE ARUNA JAGADEESAN

CRL.R.C. (MD) No.206 of 2013

1.Gladwin Neelsingh

2.Rajan

3.Victoria Vimalabai

... Petitioners/Appellants/
Petitioners/Respondents

Vs.

I.Jebanithiya

... Respondent/Respondent/
Respondent/Petitioner

Prayer: Criminal revision petition filed under Section 397 and 401 of Criminal Procedure Code to call for the records pertaining to the order passed in C.A.No.12 of 2012, dated 05.11.2012 on the file of Principal Sessions Judge, Madurai confirming the order passed in Cr.M.P.No.661 of 2012 in Cr.M.P.No.8790 of 2011 on the file of the learned Judicial Magistrate No.2, Madurai dated 06.02.2012 and set aside the same and pass such further or other orders which may deem fit pass with regard to the facts and circumstances of the case.

For Petitioners : Mr.T.Selvakumaran

For Respondent : Mr.S.Ramasamy

O R D E R

This revision is filed against the order dated 05.11.2012 passed in C.A.No. 12 of 2012 by the learned Principal Sessions Judge, Madurai confirming the order dated 06.02.2012 passed by the the learned Judicial Magistrate No.2, Madurai, in Cr.M.P.No.661 of 2012 in Cr.M.P.No.8790 of 2011.

2. Heard the learned counsel appearing for the petitioner and the learned counsel for the respondent and perused the materials available on record.

3. The only point arises for consideration is whether a 'relative' referred to in the proviso to Section 2(q) of the Protection of Women from Domestic Violence Act,2005 would include a female relative and whether the third petitioner, who is a woman, can be arrayed as respondent as per Section 2(q) of the said Act.

4.The learned Judicial Magistrate placing reliance on the judgment of Division Bench of this Court in **R.Nivendran & Others Vs. Nivashini Mohan @ M.Nivashini** reported in **2010-1-L.W. (Cr1.) 264** held that the definition of 'Respondent' is not limited to male member of the family and the word relative includes the female relative also. The learned Principal Sessions Judge, Madurai confirmed the said finding in Crl.A.No.12 of 2012 dated 5.11.2012. In paragraphs 12, 13 and 14 of the said decision stated supra held as follows:

12.The next question is as to whether a "relative" referred to in the proviso to Section 2(q) of the Act can only be a "male" relative. First of all, it has to be noted that the definition of "respondent" uses the word male and the proviso refers to "male" partner. But while referring to a "relative", the word "male" is not used. If it is the intention of the Legislature that "relative"



mentioned in the proviso can only be a "male" relative, it would have mentioned so, but it is absent.

13. On the contrary, the intention of the Legislature is reflected in the proviso to sub-section(1) of Section 19 of the Act dealing with "Residence orders". Under Clause (b) of sub-section(1) of Section 19, the Magistrate may pass 'residence orders' directing the respondent to remove himself from the shared household. In the proviso to sub-section(1) of Section 19 of the Act, it is stipulated that no order under Clause(b) shall be passed against any person, who is a woman. This would show that an order under other Clauses of Sub-section(1) can be passed against a woman, who is a relative of the husband or the male partner. If no order at all can be granted under Section 19 of the Act against a woman, the proviso to sub-section(1) of Section 19 would become redundant and that is not the Legislature intended to.

14. It is competent to the Magistrate under Section 19(1)(a) of the Act to restrain the respondent from dispossessing or disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has any legal or equitable interest in it and under Clause(c), to restrain the respondent or any of his relatives from entering any portion of the shared household, in which the aggrieved person resides. If it is construed that proviso to Section 2(q) of the Act would include only the "male" relative, the issuance of "Residence orders" would become redundant, since it would not bind the female relatives of the husband or the male partner as the case may be, who are residing in the shared household. No such restricted meaning can be given to the word "relative", mentioned in proviso to Section 2(q) of the Act.

5. Based on the aforesaid decision, both the courts held that the complaint against the female member also is maintainable. I do not find any infirmity or illegality in the order passed by the learned Judicial Magistrate No.2, Madurai confirmed by the Appellate court following the decision cited supra. Hence, this revision is dismissed. Consequently, connected M.P. Is also closed.

6. However, personal appearance of the second and third petitioners namely father-in-law and mother-in-law of the respondent/defacto complainant is dispensed with unless their presence is required by the lower court to question them or for other purposes.

7. The learned Judicial Magistrate No.2, Madurai is directed to dispose of the case as expeditiously as possible preferably within a period two months from the date of receipt of copy of this order.

Sd/-

Assistant Registrar(CO)

/True copy/



To

1. The Judicial Magistrate NO.2, Maudrai.
2. -do-thro'the Chief Judicial Magistrate, Madurai.
3. The Principal Sessions Judge, Madurai.

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+1cc to Mr.S.Ramasamy, Advocate in SR.63859

+1cc to Mr.T.Selvakumaran, Advocate in SR.63836

Cr1.R.C. (MD) No.206 of 2013
20.12.2013

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