

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2015

CORAM

THE HON'BLE MR. JUSTICE R.S.RAMANATHAN

Crl.O.P.No.1566 of 2015
and M.P.No.1 of 2015

Ragupathi

...Petitioner

vs.

Ananthi

...Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to direct the trial Court to entertain the petition filed by the petitioner in C.M.P.C.F.R.No.233/2015 in D.V.O.P.No.94/2014 on the file of the Additional Mahila Court, Magistrate Level at Salem and proceed according to Prevention of Domestic Violence Act.

For Petitioner : Mr.C.Deivasigamani

O R D E R

This petition has been filed, seeking a direction to the trial Court to entertain the petition filed by the petitioner in C.M.P.C.F.R.No.233/2015 in D.V.O.P.No.94/2014 on the file of the Additional Mahila Court, Magistrate Level at Salem and proceed according to the provisions of Protection of Women from Domestic Violence Act, 2005.

2. The respondent/wife filed D.V.O.P.No.94/2014 against the petitioner herein on the file of the Additional Mahila Court, Magistrate Level at Salem. The respondent/wife also filed C.M.P.No.2988 of 2014 under Section 23(2) of the Protection of Women From Domestic Violence Act, 2005, seeking interim maintenance and in that petition, the petitioner filed C.M.P.F.R.No.233/2014 and the same was returned by the Court directing the petitioner to state under what provision of law the petitioner can compel the petitioner in main case to enter the witness box and that was not answered by the petitioner and the said return is challenged in this petition.

3. The learned counsel for the petitioner submitted that under Section 243 CrPC, after the accused entering into the defence can apply to the Court for examining another witness on his side and the Court is bound to issue summons to those witness for examination on the side of the defence and therefore, the petitioner is entitled to

call the respondent herein, who filed D.V.O.P.No.94/2014, as a witness to be examined on his side.

4. I am unable to accept the contention of the learned counsel for the petitioner. According to me, filing of the petition itself is not maintainable. When the Court raised some question and directed the party to answer such question, without giving any reply, the same cannot be challenged by filing a Criminal Original Petition. Further, the respondent herein, who is a party in D.V.O.P.No.94/2014, filed a petition in C.M.P.No.2988/2014 claiming maintenance and in that petition, if the petitioner wants to examine himself, he can apply to the Court seeking permission to examine himself as a witness on his side, however he cannot compel the respondent, who is a party to the petition, to be examined on his side and if the respondent herein did not examine herself, she has to face the consequences and the petitioner cannot compel the respondent herein to give evidence on his side.

5. Hence, this Criminal Original Petition is not maintainable and accordingly dismissed. Consequently, connected miscellaneous petition is closed.

jvm

s/d-
Assistant Registrar (CS-III)
Dt:26/3/2015

True Copy

Sub-Assistant Registrar

To

1. The Judge, Addl.Mahila Court,
Magistrate Level at Salem.

+ 1 cc to Mr.C.Deivasigamani, Advocate SR 14480

rj(co)
prk27/3

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CrI.O.P.No.1566 of 2015