

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.7.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.Revision Case No.1125 of 2014
and
MP.No.1 of 2014 and 1 of 2015

S.Mahendran

... Petitioner

Vs

P.Leelavathi

... Respondent

Revision Petition filed under Sections 397 read with Sec. 407 of Cr.P.C. against order made in C.M.P.No.6402 of 2014 in C.M.P.No.3013 of 2014 dated 15.10.2014 on the file of the Judicial Magistrate No.1, Tiruvallur.

For Petitioner : Mr.R.C.Paul Kanagaraj

For respondent : Mrs.R.Mahalakshmi

O R D E R

This revision case has been filed as against the order passed in C.M.P.No.6402 of 2014 in C.M.P.No.3013 of 2014 dated 15.10.2014 by the learned Judicial Magistrate No.1, Tiruvallur.

2. The petitioner herein is the husband and the respondent is the wife. The respondent/wife preferred complaint under Section 12 of the Domestic Violence Act in C.M.P.No.3013 of 2014. Pending C.M.P., the petitioner herein has filed petition under Section 18 of the Domestic Violence Act in C.M.P.No.6402 of 2014 raising preliminary objection and the same was dismissed by the learned Judicial Magistrate No.1, Tiruvallur. Aggrieved over the said order, the petitioner has filed this revision.

3. According to the revision petitioner, though the complaint was given by the aggrieved person to the Protection Officer as contemplated under The Protection of Women from Domestic Violence Act, 2005, (for short "Act") the Protection Officer has not signed in the report. Since the protection Officer was not available on that day, the Office Assistant or typist or some body else in the office

of the Protection Officer has enquired and forwarded the report along with the original complaint to the Magistrate and on receipt of the said complaint, the learned Magistrate has taken cognizance of the matter as if the report was forwarded by the Protection Officer. Therefore, the aggrieved person, namely, the revision petitioner has filed a petition raising preliminary objection on the ground that the marriage in between the parties is not consummated and the said petition was dismissed by the Court below.

4. An interesting question of law was argued by the learned counsel for the petitioner in respect of the complaint given under the Domestic Violence Act before the Protection Officer.

5. Though the petitioner has raised preliminary objection that the marriage is not consummated, today when the matter is taken up, the learned counsel for the petitioner submitted that the petitioner is not pressing the said ground. But he took the technical objection that in the reference order, the concerned Protection Officer has not signed and the same was only signed by her Assistant or typist on behalf of her. Therefore, according to the learned counsel, the very filing of the petition along with report is not in accordance with law.

6. The learned counsel for the petitioner further submitted that Section 8 of the Act provides that if the protection Officer satisfies the complaint given, she has to submit the report in the form prescribed under the Act. But, in this case, somebody else has signed in the report, and hence, Section 8 of the Act has not been complied with. Therefore, he would contend that the Court below ought not to have taken the complaint for cognizance when the same is not in accordance with law.

7. The learned counsel appearing for the respondent /wife would contend that the respondent/wife has approached the proper forum and that she was examined by the officer concerned and hence, the complaint given is legal. Now the technical objection raised by the petitioner that the concerned officer has not signed in the report cannot be a ground to set aside the entire order as it is not the fault of the respondent/wife. The learned counsel for the respondent/wife further submitted that the complaint has been routed through the proper officer, namely, the Protection Officer and the mistake committed by the Protection Officer cannot prejudice the right of the aggrieved person.

8. The learned counsel for the respondent relied on the judgment of this Court in N.VIJAYAKUMAR AND OTHERS V. S.GEETHA [(2013) 2 MLJ (CRI) 62] for the proposition that the application should be in Form II is not a mandatory one and the failure to file an application as per Form No.II will not take away the right of the aggrieved person and the same will not affect the proceedings. The learned counsel

for the respondent also relied on the judgment of this Court in **NANDKISHOR v. KAVITA AND ANOTHER** [I (2010)DMC 130] for the proposition that it is not necessary for each and every case to obtain a report from the Protection Officer or service provider to decide the application for interim relief. If on the basis of records before the Court, the Court is not in a position to arrive at a just and proper conclusion, it will be open for the Court to do so and decide the matter accordingly.

9. The learned counsel for the respondent submitted that since in this case the original compliant given by the respondent is available before the Court below, the Court below de-hors the report forwarded by the Protection Officer, independently can take cognizance of the matter. Hence, the learned counsel submitted that the order of the Court below is correct.

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

11. Admittedly, the respondent / wife has approached the proper forum. Though the petitioner has raised preliminary objection that the marriage is not consummated, the petitioner has not pressed the said ground. Therefore, the order of the Court below in rejecting the preliminary objection raised by the petitioner herein, namely, the marriage is not consummated, is no more in question. Now the petitioner / husband has raised a technical ground that the report sent by the Protection Officer is not in accordance with the Act as she has not signed in the said report and the same was only signed by the Typist or Assistant or somebody else in the office of the Protection Officer.

12. In this context, it is useful to extract Section 12 (1) of the Act, which reads as follows:-

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.

As per Section 12 (1) of the Act, it is clear that three persons are empowered to file complaint. They are:- (1) the aggrieved person, or (2) the Protection Officer as contemplated under Section 8 of the Act or (3) any other person on behalf of the aggrieved person. Therefore, it is very clear that a third party can also file complaint for / on behalf of the aggrieved person and he / she need not be a relative of the said aggrieved person. When such an extraordinary ambit is given under the Act that even third party can file a complaint, can the Court narrow it down to the particular aspect that the complaint given by the Protection Officer is not maintainable. Even if the technical objection raised by the

petitioner is accepted, the same will not vitiate the very complaint itself in view of Section 12 of the Act.

13. In the present case, admittedly, the respondent/wife has given complaint to the person contemplated under the Act, namely, the Protection Officer and enquiry was also conducted by such person and later on, the same has been forwarded along with the report as per Section 12 of the Act.

14. The only question which has been raised in this revision is that instead of the protection Officer's signature, some other person in the office of the Protection Officer, either typist or Office Assistant or somebody else, which is not clearly mentioned, by name, Selvi, has signed for the officer, namely, Latha.

15. As already stated above, when Section 12 of the Act provides that any person can file complaint on behalf of the aggrieved person, merely because the Protection Officer has not signed in the report will not vitiate the very complaint. But at the same time, for taking cognizance of the complaint, the Act stipulates that Protection Officer should be satisfied. Whether the Protection Officer has satisfied herself or not will arise only if she signed in the report. In this case, unfortunately, the Protection Officer has not signed in the report, for the reasons best known to her. Merely because such a mistake is crept in, the very initiative of the proceedings cannot be said to be null and void coupled with the fact that Section 12 of the Act stipulates that any person can file complaint on behalf of the aggrieved person.

16. In this context, it is useful to refer the judgment of the Madurai Bench of this Court in VIJAYAKUMAR AND OTHERS vs. S.GEETHA [2013 2 MLJ (Cri) 62], wherein in paragraph 6, it is held thus:-

6. As far as the next contention is concerned, Section 12 (3) of the Act says that every application under Sub Section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto. Rule 6 of the Protection of Women from Domestic Violence Rules is to the effect that every application of the aggrieved person under Section 12 shall be in form II or as nearly as possible thereto. Therefore, the application should be in Form II is not a mandatory one. Failure to file an application as per Form No.II does not affect the proceedings.

Similarly, in NANDKISHOR v. KAVITA AND ANOTHER (2010)DMC 130], it is stated as follows:-

5. Therefore, I am inclined to observe that it is not necessary in each and every

case to obtain a report from the Protection Officer or Service Provider to decide application for interim relief. If on the basis of the record before the Court, the Court is in a position to arrive at a just and proper conclusion, it will be open for the Court to do so and decide the matter accordingly. In the present case, the applicant had filed reply to the application filed by non - applicants and, therefore, necessary material was before the learned trial Judge to decide the question whether interim relief should be granted. The record has been considered and order has been passed."

17. Since the Protection Officer has also forwarded the original complaint given by the aggrieved person, namely, the respondent herein along with report and the same is very well available before the Court below, the learned Magistrate, de-hors the report submitted by the Protection Officer, has got ample power to take cognizance of the complaint.

18. Therefore, without making any observation at this point of time as the same will affect the final orders to be passed by the Court below, a direction is issued to the learned Judicial Magistrate No.1, Thiruvallur to decide the matter by taking cognizance of the original complaint given by the complainant, namely, the respondent/wife and pass appropriate orders independently on merits whether cognizable offence is made out or not, without taking note of the report submitted by the Protection Officer. It is made clear that if any cognizable offence is made out, the learned Magistrate is at liberty to issue summons. It is also made clear that the preliminary objection raised, namely, the marriage is not consummated, is also not a ground to reject the complaint itself.

With the above observation, the revision is disposed of. The Court below shall take fresh cognizance based on the original complaint available before it and decide the matter afresh independently.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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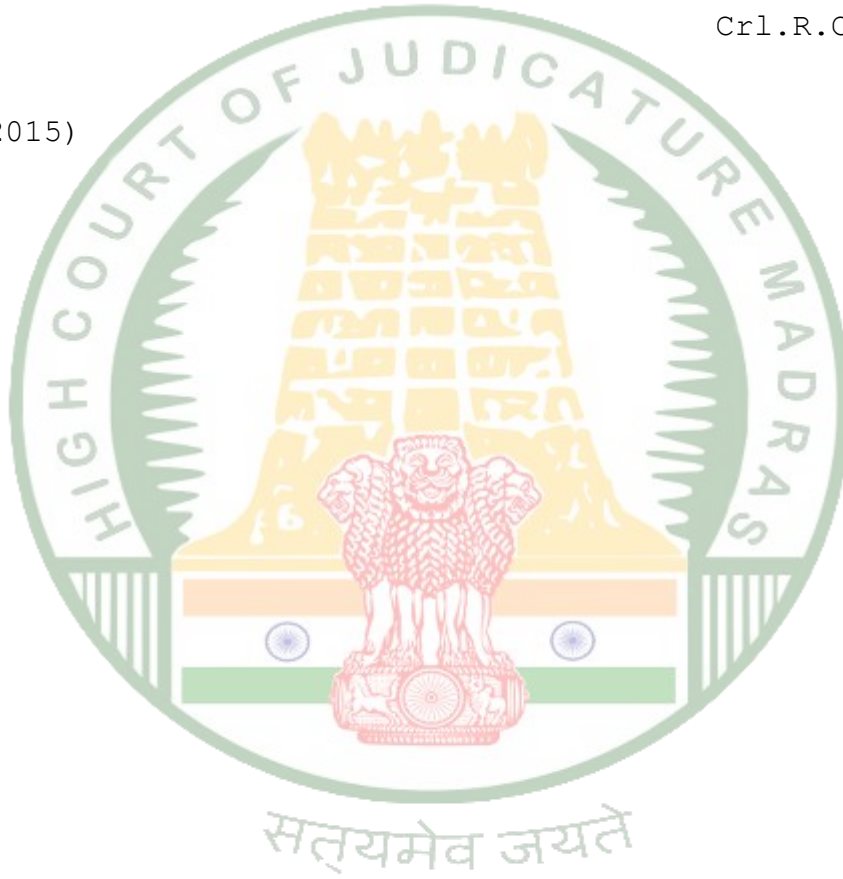
To

1. The Judicial Magistrate No.1,
Tiruvallur
2. -do- Through the Chief Judicial Magistrate,
Kancheepuram.

+1cc to Mr.R.Mahalakshmi, Advocate, S.R.No.38796

Crl.R.C.No.1125 of 2014

AR(II)
CA(13/10/2015)



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