

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.08.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.OP.No.19410 of 2015
and MP.No.1 of 2015

S.Imtiaz Ahamed

... Petitioner/Respondent

Vs

Zainab Sabira

... Respondent/Petitioner

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to direct the learned 23rd Metropolitan Magistrate, Saidapet to permit the respondent in M.C.No.22 of 2015 pending on the file of the learned 23rd Metropolitan Magistrate, Saidapet, Chennai-15 to represent the case through his counsel as directed in the notice.

For Petitioner : Mr.M.K.Kabir, Senior Counsel
for Mr.N.Iyyakannu

O R D E R

This petition has been filed to direct the learned XXIII Metropolitan Magistrate, Saidapet to permit the respondent in M.C.No.22 of 2015 to represent the case through his counsel as directed in the notice.

2. Heard the learned counsel for the petitioner and perused the materials placed on record.

3. The short point that falls for consideration in this petition is, whether the Advocate for the respondent/husband in the Domestic Violence proceedings MC.No.22 of 2015 before the XXIII Metropolitan Magistrate, Saidapet, Chennai-15 will be entitled to receive the copies of the petition filed by the aggrieved person on behalf of his party.

4. The learned XXIII Metropolitan Magistrate, Saidapet has rejected this request by order dated 21.07.2015 in Crl.M.P.No.2178 of 2015 filed by the husband on the ground that though the notice of appearance in Form No.VII permits the aggrieved party to be represented by an authorised counsel, yet in cases arising under the DV Act, the matter is quasi criminal in nature and therefore, the physical presence of aggrieved persons is essential.

5. The reasoning of the learned Magistrate cannot be said to be completely wrong. A proceeding under Section 12 of the Act is more civil in nature and only a prosecution for the violation of an order passed under the Act could be criminal in nature, warranting the presence of the accused for trial. As observed by the learned Magistrate, a complete exemption from appearance of the aggrieved person before the Magistrate cannot be granted because, the presence of the parties in person will be essential for the Magistrate to understand the length and breadth of the case in detail and pass appropriate orders. Therefore, a respondent in DV proceedings cannot claim complete exemption from appearance before the Magistrate. This Court has to strike a harmonious balance between conflicting claims and a solution has to be found pragmatically.

6. Mr. Kabir, learned Senior Counsel appearing for the petitioner/husband submits that the learned Magistrate had refused to even furnish copies of the petition to the counsel for the husband and if a direction is issued to the learned Magistrate to at least furnish the copies to the counsel and not insist upon the presence of the husband [respondent] in person, it will suffice. It is also submitted that there cannot be a complete exemption for the appearance of the respondent before the learned Magistrate and that the respondent will appear on subsequent dates.

7. In 2010[2] Crimes 858 [Cal.] Siladitya Basak and Ors Vs State of West Bengal and Anr, the Calcutta High Court has held as follows:

"15. Undoubtedly, the learned Magistrate has committed illegality in asking the petitioners to appear in person. Form VII clearly provides that the learned Magistrate may direct that the respondents may appear either personally or through a duly authorized Counsel. Therefore, since the application under Section 12 of the Act is meant for certain reliefs under Sections 18,19,20,21,22 & 23, it is not necessary that the "respondent" has invariably to appear in person. Of course, the Magistrate has judicial discretion to direct appearance of a respondent in person provided such appearance is found necessary for adjudication of the dispute. But the matter of the fact is that the Section 12 of the Act does not relate to any offence punishable under the IPC. Therefore, personal appearance of a respondent is not a must. It is submitted by the learned counsel for the petitioners because of such discretion the petitioners had to appear in person and to make an application under Section 205 of Cr.P.C. I must observe that any such application under Section 205 of Cr.P.C is not necessary. If any pleader has been engaged by the petitioners in the learned Trial Court representation by the pleader will suffice and personal appearance of the petitioners is not necessary unless the Magistrate finds it expedient at any certain occasion."

This Court is inclined to agree with the observations of the aforesaid judgment.

8. Under such circumstances, this Court directs the learned XXIII Metropolitan Magistrate, Saidapet, Chennai-15 to furnish copy of the petition to the learned counsel appearing for the respondent/husband and on any particular date when the learned Magistrate insists upon the appearance of the respondent before him, the respondent is duty bound to appear and assist the Court in effective adjudication of the proceedings.

With the above directions, this petition is closed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

gya

To

1.XXIII Metropolitan Magistrate,
Saidapet, Chennai-15.

2.The Public Prosecutor,
High Court, Madras.

+1 cc to M/s. N.Iyyakannu, Advocate, sr.39726.

CRL.OP.No.19410 of 2015

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kra(13/08)

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