

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.06.2015

Delivered on : 11.06.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.OP.No.1379 of 2014
and M.P.Nos.1 to 3 of 2014

Sanjay Kumar ... Petitioner/Respondent

Versus

B.Sheela ... Respondent/Complainant.

Criminal Original petition filed under Section 482 of the Criminal Procedure Code praying to call for the records in D.V.C.No.33 of 2013 on the file of the Judicial Magistrate, Tambaram, Chennai and quash the same.

For Petitioner : Mr.V.Vijayakumar
for M/s.Span Associates

For Respondent : Mr.V.Ragavachari
for M/s.A.Sundaravadhanam\

O R D E R

This Criminal Original Petition has been filed praying to call for the records in D.V.C.No.33 of 2013 on the file of the Judicial Magistrate, Tambaram, Chennai and to quash the same.

2. For the sake of convenience, the parties will be referred to by their name. Sanjay Kumar and Sheela got married on 01.05.1995 and they have two children through the wedlock. On account of serious differences between the spouses, they now stand estranged with one wanting to wrench the neck of the other.

3. It is the case of Sanjay Kumar that through his earnings, he purchased a land in Kadaperi Village, Tambaram in the name of Sheela and after availing loan from the LIC, he built a house in the land, comprising ground and first floor and that he has been remitting a sum of Rs.5,403/- per month towards the loan.

4. On the contrary, it is the case of Sheela that the said property belongs to her and that she was subjected to extreme cruelty

by her depraved husband. Sanjay Kumar filed OS.No.166 of 2013 before the District Munsif, Tambaram against Sheela for a bare injunction restraining her from dispossessing him from the house and an order of status quo appears to have been granted by the said Court.

5. It is admitted that Sheela has also entered appearance in OS.No.166 of 2013 and has filed a petition on 25.09.2013 to vacate the order of interim status quo and the same is pending. While so, Sheela seems to have filed a petition under Section 12 of the Domestic Violence Act against Sanjay Kumar and on 26.12.2013, the learned Judicial Magistrate, Tambaram has passed an ad-interim exparte order under Section 23 of the D.V Act against Sanjay Kumar restraining him from entering the house. Aggrieved by the D.V proceedings initiated by Sheela, Sanjay Kumar has approached this Court for quashing the proceedings.

6. This Court heard Mr.V.Vijaya Kumar, learned counsel appearing for Sanjay Kumar and Mr.V.Ragavachari, learned counsel appearing for Sheela.

7. Admittedly, the parties got married way back in the year 1995 and they have two children. It is Sanjay Kumar 's assertion that he is staying in the first floor guest room at No.32, R.V Garden, Kadaperi, Tambaram which house, according to Sanjay Kumar was built from his earnings. The order of status quo has been granted by the Civil Court in favour of Sanjay Kumar in OS.No.166 of 2013 and Sheela has also entered appearance for vacating the order on 25.09.2013. Mr.V.Ragavachari contended that the said status quo order was not extended by the learned District Munsif, Tambaram. However, it is seen from the order dated 26.12.2013 passed by the learned Judicial Magistrate, Tambaram in CMP.No.18567 of 2013 in D.V.No.33 of 2013 that there is no reference to the status quo order granted in OS.No.166 of 2013 in civil proceedings.

8. In all fairness, whether the status quo order was extended or not, it should have been disclosed by Sheela to the learned Magistrate. That apart, even the order dated 26.12.2013 passed by the learned Magistrate shows the address of Sanjay Kumar as, "First floor [guest room], No.32, R.V Garden, Kadaperi, Tambaram, Chennai-45" and that Sheela's address is also the same. Thus, even according to Sheela, her husband is living in the first floor portion of No.32, R.V Garden, Kadaperi, Tambaram and therefore, he cannot be prevented from going to his portion.

9. It is also seen that Advocates Vasudevan and Prithvirajan had entered appearance on 26.12.2013 for and on behalf of Sanjay Kumar in D.V.No.33 of 2013 before the Judicial Magistrate, Tambaram, despite which, an ad-interim exparte order seems to be passed without giving opportunity for Sanjay Kumar to place all the facts.

10. Normally, a report will be called for from the Protection Officer. In this case, the Judicial Magistrate, Tambaram seems to have passed ad-interim exparte order without calling for a report from the Protection Officer which cannot be said to be totally illegal. But, in the facts and circumstances of the present case, when there is a representation for Sanjay Kumar, it should have been advisable for the Magistrate who have been little more circumspect before passing an extraordinary ad-interim exparte order under Section 23 of the D.V Act.

11. This Court is not inclined to quash the entire D.V proceedings, for that has to take its own course before the court below. This Court finds serious infirmity in the order dated 26.12.2013 in CMP.No.18567 of 2013 in D.V.No.33 of 2013 and the same is accordingly quashed. Consequently, connected miscellaneous petitions are closed. The learned Judicial Magistrate, Tambaram is directed to proceed with the proceedings in the main case in D.V.No.33 of 2013 in accordance with law.

gya

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate,
Tambaram.
2. The Public Prosecutor,
High Court, Madras.

2 ccs to Mr.A.Sundaravadhanan, Advocate SR 28268

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