

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2015

CORAM:

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

Cr1.O.P.No.2564 of 2015

And

M.P.No.1 of 2015

1.M.Sivambigai Selvan
2.M.S.Saravanan
3.M.S.Karthikeyan
4.S.Saradhadevi
5.K.Vigneswari

... Petitioners/Respondents1 to 3,5,6

Vs.

Chandrika

... Respondent/Petitioner

Prayer :

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records pertaining to the proceedings in D.V.A.No.13 of 2014 pending on the file of the Learned Judicial Magistrate Court-II, Coimbatore and quash the same.

For Petitioners : Mr.H.Nazirudeen

ORDER

This petition is filed seeking to quash the D.V.A.No.13 of 2014 pending on the file of the learned Judicial Magistrate Court-II, Coimbatore.

2.The petitioners are the husband, sons of the first petitioner through his first wife and daughters - in - law of the first petitioner. The respondent is the second wife of the first petitioner. The respondent gave a complaint before the Social Welfare Officer, Coimbatore on 03.07.2013 and the Officer submitted a report to the learned Judicial Magistrate and on that basis the learned Judicial Magistrate had taken cognizance of D.V.A.No.13 of 2014 against the petitioners.

3.In the petition filed by the respondent, she sought the relief under Section 19 of Domestic Violence Act for protection order; under Section 20 of Domestic Violence Act for maintenance and under Section 22 of Domestic Violence Act for compensation.

4.It is submitted by the learned counsel for the petitioners that the petitioners 2 and 3 are the sons of the first petitioner through his first wife and petitioners 4 and 5 are the wives of petitioners 2 and 4 respectively. He further submitted that admittedly the respondent married the first petitioner after the death of the first wife of the first petitioner and the respondent was already married to one person and during the subsistence of the said marriage and suppressing her earlier marriage, the respondent married the first petitioner and thereafter, the respondent got divorced from her first husband and therefore, the respondent cannot be considered as the legally wedded wife of first petitioner nor can be considered as living with the first petitioner. He further submitted that even according to the complaint allegations were made against the petitioners 2 to 5 as if they abused the respondent herein and there was no occasion for the petitioners to commit such thing and false allegations were made against the petitioners as if the petitioners 2 to 5 abused the respondent. He further submitted that having regard to Section 2(f) of Domestic Violence Act, it cannot be stated that there exist any domestic relationship between the petitioners and respondent and therefore no proceeding can be initiated against the petitioners.

5.I am unable to accept the contention of the learned counsel for the petitioners. It is admitted that the respondent married the first petitioner and the petitioners 2 and 3 are the sons of the first petitioner through his first wife and petitioners 4 and 5 are the wives of petitioners 2 and 4 respectively. It is stated that this respondent was earlier married to one person and during subsistence of marriage, the respondent married the first petitioner. The said marriage was dissolved by the order made in HMOP No.1287 of 2010 on

the file of the Family Court, Coimbatore. Even assuming that the marriage between the respondent and her former husband was dissolved only on 22.01.2011, it is admitted that the respondent was living with the first petitioner as his wife and the first petitioner also treated her as his wife and therefore, it can be construed prima facie that first petitioner and the respondent are living together in the relationship of marriage. Therefore, the respondent is entitled to invoke the provisions of Domestic Violence Act.

6.As stated supra, allegations are made against the petitioners 2 to 5 that they abused the respondent and as per Section 3 of the Domestic Violence Act, such allegations prima facie constitute domestic violence. The respondent prayed for protection order and whether the respondent was residing in a shared household can be decided by the learned Judicial Magistrate during enquiry and at this stage it cannot be stated protection order cannot be passed. Similarly, the relief under Section 22 of Domestic Violence Act for compensation can be granted against the petitioners for their act of domestic violence and therefore the petition under Section 22 is also maintainable. Similarly under Section 20 of Domestic Violence Act for maintenance is also maintainable as against the first petitioner. Whether the allegations made in the petition filed by the respondent are true or not have to be decided during trial and at this stage, the Court cannot decide the same.

7.Considering the same, in my view, the petition filed by the petitioners is not maintainable and hence, I do not find any reason to grant the relief sought for in this petition and hence, this criminal original petition is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

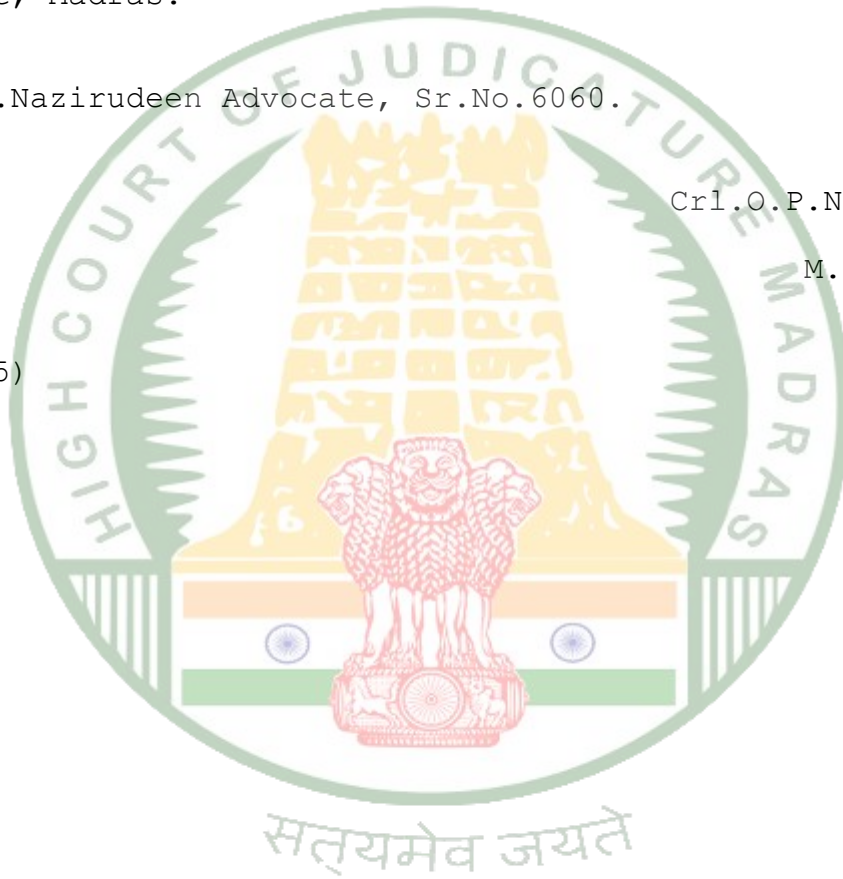
1.The Judicial Magistrate Court-II,
Coimbatore.

2.The Public Prosecutor,
High Court, Madras.

C.C. to Mr.H.Nazirudeen Advocate, Sr.No.6060.

Cr1.O.P.No.2564 of 2015
And
M.P.No.1 of 2015

MSM(CO)
KP(24.02.2015)



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