

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.03.2015

CORAM

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

Crl.O.P.No.7198 of 2015

AND

MP.1 & 2 OF 2015

1.John N.Angelo
2.Udaya Jeyara
3.P.Jeyaraj Edward

...Petitioners/Respondents

Vs.

Lilly Dyana

...Respondent/Petitioner

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C. praying to call for the records in D.V.No.19 of 2014 on the file of the Judicial Magistrate, Tambaram and quash the same.

For Petitioners : M/s.R.Gothandaraman

O R D E R

This petition has been filed by the petitioners, to call for the records in D.V.No.19 of 2014 on the file of the learned Judicial Magistrate, Tambaram.

2. The petitioner filed an application to quash the proceedings against the respondent on the ground of limitation and on the ground that the respondent had already initiated the proceedings in Cr.No.7 of 2013 on the file of W-30 All Women Police station, Poonamallee, Chennai and therefore, she is not entitled to invoke the proceedings under Protection of Women from Domestic Violence Act, 2005.

3. The learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court in 2012 Crl.L.J.309 (Inderjit Singh Grewal vs State of Punjab and Another), and submitted that in view of the provisions of Section 468 Cr.P.C., the complaint could be filed only within a period of one year from the date of the incident happening of the domestic incidence in view of the provisions of Sections 28 and 32 of the Act 2005 r/w Rule 15(6) of the Protection of Women from Domestic Violence Rules and according to the complaint, the incident of Domestic Violence, occurred on 22.06.2013 and the complaint was filed only in July 2014, after expiry of one year and therefore, the complaint was barred by limitation.

4. It is submitted by the learned counsel for the petitioner that under Section 31 of the Domestic Violence Act, the punishment is one year and as per Section 468 of Cr.P.C., if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years the period of limitation is one year and the complainant was filed beyond one year period and therefore liable to be rejected.

5. According to me, Section 31 cannot be invoked in this case. Under Section 31 of the Protection of Women from Domestic Violence Act, whenever, there is a breach of protection order or interim protection order by the respondent, it shall be an offence punishable with imprisonment of either description which may extend to one year. Even according to the petitioner, ad-interim exparte order was passed on 22.07.2014 in CMP.No.5679 of 2014 in D.V.No.19 of 2014 and therefore, the limitation start only from that period and earlier to that complaint was filed. The submission of the learned counsel for the petitioner that the complaint ought to have been within one year from the date of incident cannot be accepted as no imprisonment is provided under Domestic from Violence Act for having committed domestic violence and only in case of breach of Protection order imprisonment is provided.

6. The second argument of the learned counsel for the petitioner is that already respondent has given a complaint in Cr.No.7 of 2013 on the file of the W.13, All Women Police Station and therefore, the present complaint ought not to have been filed. He also submitted that the Cr.No.7 of 2013 has been registered for the offence under Sections 498(A) and 506(i) of IPC and Section 4 of the Tamil Nadu Women Harassment Act. In CMP.No.835 of 2014 the prayer was made by the respondent for the production of the said article stating thereunder and as such the first petitioner was forced to stay in a hotel at Chennai and therefore, submitted the complaint filed by the respondent under Protection of Women from Domestic Violence Act is not maintainable.

7. I am unable to accept the contention of the learned counsel for the petitioner. The said Cr.No.17 of 2013 was registered for the offence under Section 498(A) and 506(i) of I.P.C. and Section 4 of Tamil Nadu Women Harassment Act and the present application was filed under the Protection of Women from Domestic Violence Act and hence the present complaint is maintainable.

8. In the result, the criminal original petition is dismissed.
consequently connected miscellaneous petition are closed;

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

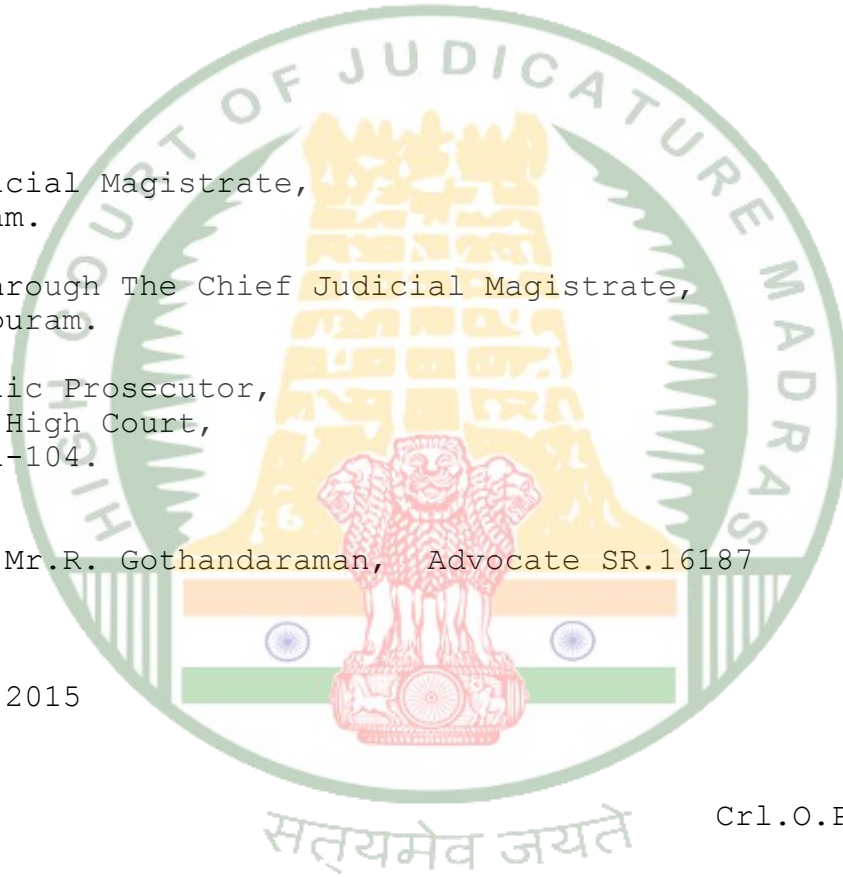
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To

- 1.The Judicial Magistrate,
Tambaram.
2. -do- Through The Chief Judicial Magistrate,
Kancheepuram.
- 2.The Public Prosecutor,
Madras High Court,
Chennai-104.

+ 1 cc to Mr.R. Gothandaraman, Advocate SR.16187

BR(CO)
EU 11.04.2015



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