

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.07.2015

Delivered on : 09.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.No.31840 of 2012
and M.P.Nos.1 of 2013 & 1 of 2012

Devaraj ...Petitioner/Respondent

Vs

Chitra ... Respondent/Petitioner

Criminal Original petition filed under Section 482 of the Criminal Procedure Code praying to call for the records in DVA.No.4 of 2012 on the file of the Judicial Magistrate III, Coimbatore and to quash the same.

For Petitioner : Mr.R.Sankarappan
For Respondent : Mr.K.M.Swamy
for M/s.G.Balasubramanian

O R D E R

This petition has been filed to quash the proceedings in DVA.No.4 of 2012 on the file of the learned Judicial Magistrate III, Coimbatore.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent.

3. For the sake of convenience, the parties will be referred to by their name. Devaraj got married to Chitra on 04.11.2001 and they have two children through the wedlock. Their marriage life ran into rough weather and admittedly they got separated sometime in November 2007. The children are with Chitra. Since Chitra was unable to maintain herself and her children, she initiated proceedings under Section 125 Cr.P.C in M.C.No.194 of 2011 before the Family Court, Coimbatore against Devaraj and it is seen that the proceedings are still pending.

4. It is seen that Chitra initiated two other proceedings, viz. HMOP.No.1122 of 2011 in the Family Court, Coimbatore for divorce and GWOP.No.413 of 2011 before the District Court, Coimbatore for appointing her as guardian for the two children. Finally, she filed proceedings under the Domestic Violence Act in DVA.No.4 of 2012 before the Judicial Magistrate III, Coimbatore, which is now assailed by Devaraj in this quash application.

5. Mr.R.Sankarappan, learned counsel appearing for Devaraj submitted that Chitra has been filing several cases in different courts only with an intention to harrass Devaraj. Learned counsel also contended that Chitra has given false address, as if she is residing in Coimbatore for the sake of invoking the jurisdiction of Coimbatore courts when actually she is residing elsewhere.

6. Devaraj has filed HMOP.No.182 of 2012 for restitution of conjugal rights and that case is also pending. Learned counsel Mr.Sankarappan submitted that GWOP.No.413 of 2011 was dismissed by the Trial Court on 18.07.2013 with findings damning Chitra. However, the Trial Court gave custody of the children to Chitra, but also gave visiting rights to Devaraj. Aggrieved by the Trial Court order, Chitra approached this Court in CMA.No.3016 of 2013 and by order dated 02.03.2015, the visitation rights given by the Trial Court has been slightly modified by this Court.

7. Mr.K.M.Swamy, learned counsel appearing for Chitra submitted that remedies available under the DV Act is in addition to the remedies available in other statutes as laid down in Section 36 of DV Act. In view of Section 36 of DV Act, as rightly contended by Mr.K.M.Srirangan, learned counsel appearing for Chitra, Section 36 of DV Act saves the proceedings and it cannot be said to be not maintainable.

8. There seems to be some force in the contention of Mr.Sankarappan that the proceedings under the DV Act has been deliberately launched in Coimbatore, though Chitra and the children are residing in Pollachi, which is more nearer to Tiruppur, where Devaraj is residing. The two children are admittedly studying in Shanti Matriculation School, Jothi Nagar, Pollachi and under such circumstances, the contention of Chitra that she is residing in Coimbatore has to be taken with a pinch of salt.

9. That apart, Chitra herself in the DV petition has stated that she and her children got separated from Devaraj since 20.11.2007. In paragraph No.18 of the petition in DVA.No.4 of 2012, Chitra has averred that she filed GWOP.No.413 of 2011 before the District Court for guardianship of the children and on 21.04.2012, when she came out of the court, Devaraj accosted her in the court premises and attempted to abduct the children. These allegations were gone into by the Family Court. GWOP.No.413 of 2011 was transferred from the file of the District Court to the Family Court, Coimbatore and after contest, the court has given the following findings:

"11. ... Thus on the petitioner side projected two inconsistent version according PW1 on 20.11.2007 the respondent came to petitioner house which is situate at Mahalingapuram but PW2 said on 20.11.2007 the respondent came to his house at Sethupathinagar. The witness PW2 in his cross examination stated that respondent never said he will cut off female child. This inconsistency shows that the case putforth by the petitioner is not true it

is only an intervention of the petitioner to give black picture upon the respondent.

... 13. On the petitioner side proudly stated that she and her mother are looking after the children. The respondent also admitted that children are looking after by the petitioner and her mother very well. The grievance of the respondent is when the petitioner and her mother are enjoying the company of children, why not by he and his aged mother? It is stated that respondent mother is residing in Thimmanaickenpalayam she is 95 years old. It is compliant that the petitioner refused to take the children show to their paternal grand mother to offer blessings. It is strange when the petitioner is proud to say that she and her mother are looking after the children, then why the petitioner denies such right to the respondent and to his mother. The conduct of the petitioner claiming exclusive rights over the children to her and her family member excluding the respondent and his mother is unjustifiable.

14. On the petitioner side stated that the respondent is not proper person to remain as guarding to the children, the respondent is a commerce graduate, having sufficient income and also owning immovable properties. Even now he is ready to bear the expenses of the children, he wants he should be permitted to mingle with the children. On the respondent side not objected, the petitioner having in custody of the children, it is also fairly admitted that the children are admitted in good school. The petitioner is having post graduation.

... 16. The petitioner filed partition suit on behalf of minor children claiming share in the immovable property of respondent. The Petitioner also filed divorce petition HMOP.No.1122/2011. The same is pending. On the respondent side filed interim application in the divorce petition IA.No.340/13 seeking visitation right of the children. This Court also granted visitation right to the respondent to see the children on Sundays at the petitioner residence. The petitioner not complied the order, she use to go away with the children after locked the house, whenever the respondent went to see the children. In this regard when she was cross examined she has given only evasive reply. The attitude and the behaviour of the petitioner shows that she has no respect to the court and it's orders."

10. Of course, the aforesaid findings are not final and they have been assailed by Chitra in CMA.No.3016 of 2013 which is pending on the file of this Court. It is an admitted fact that Devaraj has filed a petition for restitution on conjugal rights and he also expressed his willingness to pay Rs.5,000/- per month as maintenance.

11. Mr.Sankarappan, learned counsel appearing for Devaraj reiterated the undertaking that Devaraj will pay Rs.50,000/- as arrears and Rs.5,000/- per month as ad-interim maintenance for children.

12. It is seen that Chitra has set up the two children to even file a partition suit against Devaraj. On a conspectus of the facts obtaining in this case, this Court finds that the DV Act proceedings initiated by Chitra is clearly an abuse of process of court as she only wants to harrass Devaraj through the process of law. Though this Court holds that in the teeth of Section 36 of the DV Act, the petition filed by Chitra is maintainable, yet this Court finds that there is no bonafide in the claim of Chitra for the aforesaid reasons.

13. This Court directs Devaraj to deposit a sum of Rs.50,000/- towards arrears and continue to deposit Rs.5,000/- every month to the credit of MC.No.194 of 2011 before the Family Court, Coimbatore, before 5th of every month and on such deposit, Chitra will be entitled to withdraw the same as ad-interim maintenance on behalf of the children. The aforesaid amounts shall be taken into consideration, if any maintenance amount is fixed by the courts below.

14. In the result, this petition is allowed and the proceedings in DVA.No.4 of 2012 before the learned Judicial Magistrate III, Coimbatore is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate III,
Coimbatore.

2. The Chief Judicial Magistrate, Coimbatore.

+1cc to Mr.G. Balasubramaniam, Advocate, S.R.No.34414

+1cc to Mr.R. Sankarappan, Advocate, S.R.No.34469

RV (CO)

EU(21/07/2015)