

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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CRIMINAL PETITION No.8408 OF 2012

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ORDER:

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This is an application under Sections 482 of the Code of Criminal Procedure, 1973 (2 of 1974) (for short, 'the CrPC') by the petitioners-respondents 2 to 4 in D.V.C.No.8 of 2012, on the file of the learned Additional Judicial Magistrate of First Class, Vizianagaram, requesting to quash the proceedings against them in the said D.V.Case.

2. I have heard the submissions of the learned counsel for the petitioners and the learned Additional Public Prosecutor representing the 1st respondent/State. Though, notice was stated to have been served on the learned counsel on record for the 2nd respondent in the proceedings before the trial Court, none appeared for the said respondent. I have carefully perused the material record.

2. (a) The 2nd respondent herein is the petitioner in the DV Case. The petitioners herein are the respondents 2 to 4 in the DV Case. The parties shall hereinafter be referred to as the petitioners and the 2nd respondent as they are arraigned in this criminal petition.

3. Now, the points for determination are -

- i) **Whether the petitioners have made out valid and sufficient grounds for quashing the proceedings against them in D.V. Case No.8 of 2012 on the file of the Court of the learned Additional Judicial Magistrate of First Class, Vizianagaram?**
- ii) **Whether the uncontraverted allegations made in the complaint of the 2nd respondent do not disclose even a *prima facie* case against the petitioners?**

- iii) **Whether the application of the 2nd respondent should not have been entertained by the learned Magistrate against the petitioners (respondents 2 to 4) without discussing the domestic and legal relationship of the petitioners with the 2nd respondent?**

4. POINTS:

- 4. (a)** The substance of the D.V.Case filed by the 2nd respondent, in brief, is this:

“The 1st respondent in the DV Case, who is not a party to the present criminal petition, is the husband of the 2nd respondent herein. The petitioners herein are the respondents 2 to 4 in the DV Case. The petitioners 1 and 2 are the sisters of the husband of the 2nd respondent. The 3rd petitioner is the husband of the 2nd petitioner herein. After the marriage of the 2nd respondent on 12.03.2009, she had joined her husband at Prahladapuram near Simhachalam. At the time of the marriage dowry in cash and gold was given. At the time of joining her husband, her parents had given household articles etcetera worth Rs.50,000/-. The petitioners 2 and 3 used to reside along with the 2nd respondent and her husband. The 1st petitioner is a resident of Vizianagaram. The husband of the 2nd respondent is a Music Teacher in DAV Public School. The 2nd respondent was looked after well for one year. When she was pregnant, she was brought to her brother’s house at Vizianagaram. On a request, the husband of the 2nd respondent came once to the house of the brother of the 2nd respondent and had left immediately. The 2nd respondent had given birth to a male child. In spite of a communication made about the same, at the evil instance of the petitioners 1 to 3 herein, the husband of the 2nd respondent did not come

to see the 2nd respondent and her Son. At the instance of the petitioners, he had neglected her. The 1st petitioner used to visit the house of the husband of the 2nd respondent. The petitioners had polluted the mind of the husband of the 2nd respondent and by indulging in bad canvassing against the 2nd respondent, they had spoiled her life. Though, the brother and the sister-in-law of the 2nd respondent had personally approached the husband of the 2nd respondent, there is no change in his attitude. When they both went along with mediators to Simhachalam, the husband of the 2nd respondent and the petitioners did not open the door and had abused them in filthy language. The 2nd respondent is living at the mercy of her brother. The 2nd petitioner is often making phone calls and abusing the 2nd respondent and causing mental harassment. During the stay of the 2nd respondent with her husband the petitioners 2 and 4 had subjected her to mental cruelty. The husband of the 2nd respondent and the petitioners herein subjected the 2nd respondent to indiscriminate ill-treatment. The 2nd respondent was necked out of the house of her husband in the month of February 2012. The 2nd respondent filed against her husband, a Pre-Litigation case in PLC No.10 of 2012 before the Lok Adalat. On mediation he had agreed to look after the 2nd respondent with love and affection. On that she had joined her husband as per the orders dated 16.03.2012. Her husband and the petitioners 2 and 3 looked after her properly for three days and had again subjected her to mental and physical cruelty by demanding additional dowry. When she had pleaded her inability in that regard, her husband and the petitioners increased the harassment and had threatened by saying that her husband would give divorce to her and had necked her out of the house. So, the 2nd respondent had to leave her matrimonial home and live with her brother. While so, the police of

Pendurthi took the 2nd respondent and her brother's wife to the police station stating that the husband of the 2nd respondent had filed a report. During the enquiry the Police chastised the husband of the 2nd respondent and had advised him to take back the 2nd respondent and treat her properly. As there is no change in the attitude of her husband and the petitioners she had filed the DV case."

Pleading so, in her petition, the 2nd respondent had claimed the following reliefs:-

- 1) **To direct her husband and the petitioners herein not to commit any acts of domestic violence.**
- 2) **To provide alternate accommodation similar to the one she used to enjoy in the shared household or to order to pay rent for her accommodation.**
- 3) **To direct the husband to pay Rs.2,000/- per month towards her medical expenses.**
- 4) **To grant her Maintenance @ Rs.4,000/- per month.**
- 5) **To Direct the respondents in DV Case to pay an amount of Rs.1,00,000/- as compensation/damages for the injuries caused, mental torture and emotional distress caused by the acts of domestic violence.**

4. (b) Now, the petitioners herein, who are respondents 2 to 4 in the DV Case, are seeking to quash proceedings against them in the said DV Case by *inter alia* contending as under:

'The petitioners 1 and 2 are the sisters of the husband of the 2nd respondent. The 3rd petitioner is the husband of the 2nd petitioner. The petitioners are living elsewhere and at different places and they have nothing to do with the matrimonial relationship between the 2nd respondent and her husband. The husband of the 2nd respondent filed a FCOP 53 of 2012 on the file of the Family Court, Vizianagaram against

the 2nd respondent. The present DV case is filed to harass the petitioners. The continuation of the proceedings against the petitioners is an abuse of process of law and court.'

4. (c) At the time of hearing, the learned counsel for the petitioners had submitted that the petitioners are related to the husband of the second respondent. He had further submitted that absolutely no *overt acts* or acts of domestic violence are attributed to the petitioners herein and that on a reading of the entire complaint and on taking into consideration the uncontroverted averments in the petition of the 2nd respondent also no case much less a *prima facie* case is disclosed against the petitioners and that therefore, on that ground alone the proceedings in the DV Case against the petitioners are liable to be quashed. He had also stated that the petitioners never shared the household and had no domestic relationship with the 2nd respondent.

5. In the light of the contentions and rival contentions, I have gone through the material record. Apart from the allegations against the husband, it is stated in the petition itself that the 1st petitioner is residing at Vizianagaram and that she was often visiting the house of the 2nd respondent and her husband. Therefore, from the averments in the petition itself, it is clear that the 1st petitioner herein, who is the 2nd respondent in DV case did not live in a shared household and she had no domestic relationship as contemplated under law with the 2nd respondent. Even in the DV case, the residential address of the petitioners 2 and 3, who are wife and husband was shown as Dr.No.18-37, Prahladpuram of Simhachalam. Petitioner No.2 is therefore, the married sister of the husband of the 2nd respondent. Therefore, the contention that the married sister and brother-in-law shared the household and had domestic relationship with the 2nd respondent and her

husband, when they lived together cannot be countenanced. Further, the allegations against the petitioners that they had ill-treated the 2nd respondent and that the petitioners had polluted the mind of the husband of the 2nd respondent are all omnibus allegations without any details and such allegations in the DV case are made in a casual manner without giving specific instances and the nature of harassment meted out by the petitioners. Admittedly, after estrangement between the spouses, a pre-litigation case in PLC 10 of 2012 was filed before the DLSA, Vizianagaram and after mediation, the 2nd respondent had joined her husband. Therefore, she cannot now make a complaint about any harassment prior to the re-union. After reunion, as per orders dated 16.03.2012, the 2nd respondent admittedly stayed with her husband for a short time and during that period, she was looked after well for a period of four days is admitted by her. According to her, after reunion, she was again harassed and was necked out of the house. She did not plead in the DV case the date on which she was necked out and on what date, she had left the matrimonial home. Thus, the averments in the DV case against these petitioners are omnibus and vague allegations without any details. Therefore, even on a plain consideration of all the uncontroverted averments made in the petition of the 2nd respondent, it is obvious that the same do not disclose a *prima facie* case against the present petitioners. On this ground, the DV Case against the petitioners is liable to be quashed.

6. Coming next to the contention that the learned Magistrate ought not to have taken the case on file against the present petitioners for the reason that they have no domestic relationship and that they have never shared the household or lived together in a shared household with the 2nd respondent and her husband, it is necessary to refer to the relevant provisions. Under Section 12 of the Act, an aggrieved person

may present an application to the Magistrate seeking one or more reliefs under the Act.

Section 2 (a) defines 'aggrieved person'; and, it reads as follows:

2 (a) 'aggrieved person' means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent'.

The above definition makes a reference to 'domestic relationship between the aggrieved woman and the respondent in the DV case'. The definition also makes a reference to 'domestic violence'.

'Domestic relationship' which is defined in Section 2(f) reads as under:

2 (f) 'domestic relationship' means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family'

Thus, Section 2 (f) of the Act dealing with 'domestic relationship' refers to shared household; and, 'shared household' as defined in Section 2(s) reads as follows:

2 (s) 'shared household' means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared house-hold.'

Section 2 (q) defines 'respondent' as follows:

2 (q) 'respondent' means any adult male person who is, or has been, in a domestic relationship with the aggrieved

person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner'

'Domestic violence' which is defined in Section 2(g) reads as under:

2 (g) 'domestic violence' has the same meaning as assigned to it in Section 3.'

Section 3 of the Act defines 'domestic violence' and the said provision reads as follows:

3. Definition of domestic violence:- For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it –

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.”

Thus, Section 3 of the Act also in the introductory part makes a reference to the word 'respondent'.

7. A plain and analytical reading and a harmonious consideration of all the provisions of the Act, particularly, the above definitions brings to the fore the following aspects: A person can be arraigned as a respondent in a DV case provided he is or has been in a domestic relationship with the aggrieved person. The proviso to Section 2(q) says that an aggrieved wife may also file a complaint against the relation

of a husband. A plain reading of the said definition would make it manifest that any person who can be arraigned as a respondent must be a person who is or has been in domestic relationship with the aggrieved person and must have subjected the aggrieved person to any act of domestic violence. Unless the said requirements are fulfilled a person cannot be arraigned as a respondent in a DV Case. Coming to the aspect of 'domestic relationship', the domestic relationship means a relationship between two persons who either are living together or had at any point of time lived together in a 'shared household' when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. The definition of 'shared household' is already extracted supra.

8. Therefore, in the well-considered view of this Court, for a person to be made a respondent in a DV case filed by an aggrieved woman, such respondent, must have a domestic relationship with the aggrieved person and must have been living or must have lived together in a shared household along with the aggrieved person when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. Therefore, when any person who is so related who has been not living or had not lived together at any point of time with the aggrieved person in a shared household and who has/had no domestic relationship cannot be made a respondent to a case filed by the woman under the provisions of the Act.

9. To put it in other words, in order to arraign a person as a respondent in a DV case filed under section 12 of the Act, there must be a domestic relationship either in present or in the past between the aggrieved person and the respondent. In any case the domestic relationship must be in existence at the relevant time when aggrieved

person has been subjected to any act of domestic violence by the respondent. It is noticeable from the provisions that a 'domestic relationship' arises between the aggrieved person and another, in case when either they are living together or have at any point of time lived together in a shared house hold and when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. The aggrieved person and the respondent need not be living together in a shared household at the time of the filing of the case/petition and it would be sufficient if they had lived together at any point of time in the past when the alleged acts/omissions/conduct complained of had taken place.

10. Reverting to the facts of the case, the 1st petitioner (2nd respondent in DV case) even according to the averments in the DV case had never lived together in a shared household and had no domestic relationship with the 2nd respondent during the time the 2nd respondent lived with her husband. The petitioners 2 and 3 (respondents 3 and 4 in the DV case) had also never lived together in a shared household and had no domestic relationship with the 2nd respondent during the time she had lived with her husband. No specific overt acts constituting domestic violence are attributed to them. More over, the 2nd respondent is claiming alternate accommodation or rent for accommodation, medical expenses, compensation and maintenance, and the same are all payable by her husband to her and there is no liability for the present petitioners in that regard. In fact, the claims for money were made against the husband. The only relief claimed against the petitioners is to direct them not to commit any acts of domestic violence. Now, the 2nd respondent is living with her brother. She is not living in a shared household. There is no averment in the petition/DV case of the 2nd respondent and no

material is also placed on record to show that the petitioners are having or had any domestic relationship with the 2nd respondent. It is not pleaded or shown by any material brought on record that the petitioners and the 2nd respondent are living together or had lived together at any point of time in a shared household and are having or had a domestic relationship with the 2nd respondent. Further, after the husband of the 2nd respondent filed a petition for divorce the present case under the provisions of the Act was filed by the 2nd respondent roping in the petitioners, who are the sisters and brother-in-law of the husband. The law is well settled that in a matrimonial case like the present one, when only a casual reference is made to the relatives of the husband and there is absence of specific allegations of active involvement in the matter and when the allegations made are omnibus and vague in nature and when the un-controverted allegations made in the complaint/DV case do not disclose even a *prima facie* case, the continuation of the proceedings against such relatives of the husband would be an abuse of judicial process. The above view of this Court finds support from the ratio in the decision in **Geeta Mehrotra v. State of U.P.**^[1]. Therefore, this court considers that continuation of proceedings against the petitioners is an abuse of judicial process and hence, the petitioners are justified in seeking the reliefs.

11. Viewed thus, this Court finds that the petitioners have made out valid and sufficient grounds to quash the proceedings against them in the D.V.C.No.8 of 2012 on the file of the learned Additional Judicial Magistrate of First Class, Vizianagaram.

12. **In the result,** the criminal petition is allowed and the proceedings against the petitioners in the D.V.C.No.8 of 2012 on the file of the learned Additional Judicial Magistrate of First Class, Vizianagaram are quashed.

Miscellaneous petitions pending, if any, in this petition shall stand closed.

M.SEETHARAMA MURTI, J

Date: 19.01.2015

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[\[1\]](#) (2012) 10 Supreme Court Cases 741