

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P.No.11262 of 2014

and

M.P.No.1 of 2015 and M.P.No.1 of 2014

1.S.Jayakumar
2.S.Rani
3.L.Jayanthi

.... Petitioners

Vs.

1.J.Dhanalakshmi

2.The Protection Officer
District Social Welfare Department
District Collector's Office Complex
Singaravelu Maligai 8th Floor
Rajaji Salai, Chennai 600 001.

.... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to the proceedings pending enquiry in C.C.No.2817 of 2013 on the file of the X Metropolitan Magistrate, Egmore, Chennai and quash the same.

For petitioners : Mr.V.Subramani

For R1 : Mr.S.Rajeswaran

RESERVED ON	PRONOUNCED ON
03/08/16	11/08/16

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O R D E R

This petition has been filed to call for the records pertaining to the proceedings pending enquiry in C.C.No.2817 of 2013 on the file of the X Metropolitan Magistrate, Egmore, Chennai and quash the same.

2. Heard the learned counsel for the petitioners and the learned counsel appearing for the first respondent.

3. For the sake of convenience, the parties will be referred to by their name.

4. Jayakumar got married to Dhanalakshmi on 24.02.2012 and thereafter, their marriage ran into rough weather, resulting in they getting estranged. Jayakumar is a hair dresser by profession. Dhanalakshmi filed a petition in C.C.No.2817 of 2013 before the X Metropolitan Magistrate, Egmore, under the Protection of Women from Domestic Violence Act, 2005 [hereinafter referred to as "D.V.Act"] against Jayakumar, Rani/mother of Jayakumar and Jayanthi/sister of Jayakumar, claiming various reliefs, challenging which Jayakumar is before this Court.

5. The learned counsel for Dhanalakshmi placed reliance on the provisions of Section 41(d) of the Specific Relief Act and submitted that no person can be restrained from prosecuting in a criminal matter and therefore, this quash application should be dismissed. He also submitted that Jayakumar had not taken care of Dhanalakshmi and therefore, proceedings under the D.V. Act should not be quashed.

6. Per contra, learned counsel for Jayakumar submitted that even according to the complaint given by Dhanalakshmi to the Protection Officer, she had stated that they got separated on 14.11.2012 on the ground that the marriage could not be consummated because of some defect with Jayakumar and that is the true reason behind Dhanalakshmi filing a petition under the D.V. Act not only against Jayakumar, but also against his mother and sister.

7. Apart from that, learned counsel for Jayakumar brought to the notice of this Court a letter dated 11.03.2013, written by Dhanalakshmi to the Protection Officer, Madras, wherein, she has stated that she had earlier given a complaint and since the complaint does not contain the necessary averments for proceeding under the D.V. Act, she has sought permission to withdraw the complaint and accept the present complaint which is in consonance with the various provisions of the D.V. Act.

8. Section 41(d) of the Specific Relief Act does not take away the right of a party to move the superior Court under Section 482 Cr.P.C. or under Article 227 of the Constitution of India to challenge judicial proceedings pending before the subordinate Court.

9. This Court perused the said letter dated 11.03.2013, given by Dhanalakshmi to the Protection Officer, which clearly states as above. Thus it is clear, that the present complaint under the D.V. Act has been moduled to suit the provisions of the D.V. Act only to harass Jayakumar and his family members. Admittedly, Jayakumar had filed H.M.O.P.No.792 of 2013 for divorce, which was pending on the file of the II Additional Family Court, Chennai.

10. While so, the disputes were referred to National Lok Adalat, where Jayakumar and Dhanalakshmi appeared in Lok Adalat Case No.3523 of 2015 on 11.04.2015 and arrived at a compromise, under which Jayakumar agreed to withdraw H.M.O.P.No.792 of 2013 and Dhanalakshmi agreed to withdraw C.C.No.2817 of 2013 and they both agreed to live together.

11. On the strength of the undertaking given before National Lok Adalat, Jayakumar withdrew H.M.O.P.No.792 of 2013, but Dhanalakshmi did not withdraw C.C.No.2817 of 2013, which clearly shows that Dhanalakshmi has not come to this Court with clean hands.

In the result, this petition is allowed and the entire proceedings in C.C.No.2817 of 2013 on the file of the X Metropolitan Magistrate, Egmore, Chennai is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gms

To

- 1.The X Metropolitan Magistrate,
Egmore, Chennai.
- 2.Do- Through The Chief Metropolitan Magistrate,
Egmore, Chennai.
- 3.The Protection Officer
District Social Welfare Department
District Collector's Office Complex
Singaravelu Maligai 8th Floor
Rajaji Salai, Chennai 600 001.
- 4.The Public Prosecutor
High Court, Madras 600 104.

+1cc to Mr.V.Subramani, Advocate, S.R.No.45916
+1cc to Mr.S.Rajeswaran, Advocate, S.R.No.45871

Cr1.O.P.No.11262 of 2014

GJ(CO)
CA/22/08/2016

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