

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

Cr1.O.P.No.20753 of 2015
and
M.P.Nos.1 and 2 of 2015

1.M.Sathish Kumar
2.M.Umadevi
3.T.Dhanalakshmi
4.M.Vanitha
5.Tamil Amudhan
6.V.Manogaran
7.V.Ravi

...Petitioners/Respondents 1 to 7

-V.-

N.Latha

...Respondent/Complainant

PRAYER:

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to quash the proceedings initiated against the petitioners in M.C.No.11/2015 pending on the file of the learned Additional District Munsif cum Judicial Magistrate, Ambur, Vellore District.

For Petitioner : Mr.E.Kannadasan

For Respondents: Ms.S.Thamizharasi

O R D E R

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

2. The petitioners have come forward with the present application seeking to quash the proceedings in M.C.No.11/2015 pending on the file of the learned Additional District Munsif cum Judicial Magistrate, Ambur, Vellore District stating that the marriage between the first petitioner and the respondent was performed on 03.12.2012. Thereafter, the respondent left the matrimonial home for confinement and she did not return back. Hence, a notice was issued to the respondent on 02.05.2014 and thereafter, FCOP.No.444/2014 was filed before the Family Court, Vellore praying for restoration of conjugal rights. In the said

O.P, the respondent filed her counter stating that if the first petitioner is ready to put up a separate residence, then the respondent is willing to come along with her child and reside with the first respondent and his parents. Immediately thereafter, the first respondent filed a memo dated 10.11.2014 seeking to dismiss the FCOP.No.444/2014 as not pressed.

3. While so, the first petitioner filed another application in FCOP.No.9/2015 on the file of the Family Court, Vellore seeking divorce on the ground of cruelty and the same is pending. Thereafter, the respondent had filed an application under the Domestic Violence Act against the 1st petitioner [husband], 2nd petitioner [Mother-in-law], 3rd and 4th petitioners [Sisters-in-law], 5th Petitioner [husband of the 3rd petitioner], 6th petitioner [Father-in-law] and 7th petitioner [brother of the 6th petitioner]. The learned counsel appearing for the petitioners would state that the respondent had only made vague allegations against the petitioners. Hence, he prayed for quashing of the proceedings against the petitioners herein.

4. Resisting the same, the learned counsel appearing for the respondent would submit that in paragraphs 4 and 5 of the petition filed under the Domestic Violence Act, the respondent had made specific allegations against all the petitioners and hence, there is no ground for quashing the proceedings. Further, Section 2(q) of the Domestic Violence Act clearly defines 'respondent'. The petitioners 2 to 7 herein are the relatives of the first petitioner/husband and they are in domestic relationship with the aggrieved person. The learned counsel for the respondent also relied upon the following decisions:

(i) In the decision reported in II (2015) DMC 422 (SC), Juveria Abdul Majid Patni v. Atif Iqbal Mansoori, it was held that an act of domestic violence once committed, subsequent decree of divorce will not absolve liability of husband from the offence committed or to deny the benefit to which aggrieved person is entitled under the Act.

(ii) In the decision reported in III (2015) DMC 823 (SC), Krishna Bhattacharjee v. Sarathi Choudhury and Another, it was held that before throwing a petition at threshold, it is obligatory to see that person aggrieved under such a legislation is not faced with a situation of non-adjudication. It was further held that the 2005 Act is a beneficial as well as assertively affirmative enactment for realisation of constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence.

5. By relying on the above decisions, the learned counsel would submit that when specific allegations had been made against all the petitioners in paragraphs 4 and 5 of the

petition filed under the Domestic Violence Act, the same has to be justified by way of examination of witnesses and thus, prayed for dismissal of the present criminal original petition.

6. Considered the rival submissions made by both sides and perused the typed set of papers.

7. It is an admitted fact that the marriage between the first petitioner and the respondent was performed on 03.12.2012. The respondent left the matrimonial home for confinement and she never returned back. Hence, the first petitioner filed FCOP No.444/2014 on the file of the Family Court, Vellore for restitution of conjugal rights. In the said O.P the respondent filed a counter stating that she is willing to return back with the child and live with the first petitioner and his parents, if the first petitioner is ready to put up a separate residence. Hence, on the basis of the memo filed by the first petitioner, the proceedings in FCOP No.444/2014 was dismissed as not pressed. Thereafter, the first petitioner filed another O.P seeking divorce on the ground of cruelty and the same is pending. While so, the respondent had preferred a complaint under the Domestic Violence Act against the 1st petitioner [husband], 2nd petitioner [Mother-in-law], 3rd and 4th petitioners [Sisters-in-law], 5th Petitioner [husband of the 3rd petitioner], 6th petitioner [Father-in-law] and 7th petitioner [brother of the 6th petitioner].

8. On a bare perusal of paragraphs 4 and 5 of the complaint, it could be seen that specific allegations had been leveled against all the petitioners herein. At this juncture, it is appropriate to consider the decisions relied on by the learned counsel for the respondent.

8.1. In the decision reported in II (2015) DMC 422 (SC), Juveria Abdul Majid Patni v. Atif Iqbal Mansoori, it was held that apart from 'physical abuse' and 'sexual abuse', 'verbal and emotional abuse' and 'economic abuse' also constitute 'domestic violence'. The same can be decided only after letting in oral and documentary evidence.

8.2. In the decision reported in III (2015) DMC 823 (SC), Krishna Bhattacharjee v. Sarathi Choudhury and Another, it was held that before quashing a proceeding, the Court must keep in mind that 'justice to the cause is equivalent to the salt of ocean'. Further, the Court of law is bound to uphold the truth which sparkles when justice is done. Before throwing a petition at threshold, it is obligatory to see that person aggrieved under such a legislation is not faced with a situation of non-adjudication.

9. Considering the facts of the present case in the light of the above decisions, the respondent/wife has filed a counter before the Family Court stating that she is ready and willing to join her husband along with her child, provided the first petitioner/husband puts up a separate residence, since the house they were residing belong to the third petitioner and she is unwilling to reside there because of the alleged cruelty met out by her. In such circumstances, I am of the view that an opportunity must be given to the respondent/wife to prove her case.

10. In the above stated circumstances, I am of the considered view that there is no reason to quash the proceedings against the petitioners since all the petitioners come under the definition of Section 2(q) of the Domestic Violence Act, 2005. Accordingly, the present Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

11. At this juncture, the learned counsel for the petitioners seeks to dispense with the personal appearance of the petitioners. Considering the same, the Trial Court is directed to consider the application, if filed and dispose of the same within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Additional District Munsif-Cum,
Judicial Magistrate,
Ambur, Vellore District.

+1cc to Mr.E.Kannadasan, Advocate, S.R.No.13073
+1cc to Mr.S.Thamizharasi, Advocate, S.R.No.12841

Cr1.O.P.No.20753 of 2015

vgi (CO)
srg (11/03/2016)