

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.12.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CRL.O.P.No.24646 of 2009

and

M.P.No.1 of 2009

Saravana Raja

...

Petitioner

- Vs -

Mrs.Valli

...

Respondent

Prayer : Criminal Original Petition is filed under Section 482 Cr.P.C. to call for the records in M.C.No.6 of 2009 on the file of the learned Judicial Magistrate, No.I, Puducherry and quash the criminal proceedings.

For Petitioner

: Mr.R.Chandrasekaran

For Respondent

: Mr.E.J.Ayyappan

सत्यमेव जयते
ORDER

Invoking the provisions of Section 482 of Cr.P.C., this petition is filed to quash the proceedings pertaining to the case in M.C.No.6 of 2009 which is pending on the file of the learned Judicial Magistrate No-I, Puducherry.

2. The petitioner herein is the respondent in M.C.No.6 of 2009 whereas the respondent herein is the petitioner.

3. The petitioner as well as the respondent are husband and wife. The respondent has filed a complaint before the learned Judicial Magistrate-I, Puducherry as against the petitioner under Section 12 of the Protection of Women from Domestic Violence Act, 2005. In her petition, the respondent has sought the following reliefs:

"to grant protection orders in her favour in terms of Sections 17, 18, 19, 20 and 22 of the P.W.D.V.Act, 2005 restraining the respondent from:

a) *Committing any act of domestic violence as provided under Sec.18(a) to (g);*

b) *restraining the respondent and his men from dispossessing or in any other manner disturbing the possession and enjoyment of the houses situate at 151, IV Cross, Thiruppur Kumaran Nagar, Velrampet, Puducherry and also the newly constructed house comprising in bearing R.S.No.189/2, 189/3 of Murungapakkam Revenue Village, T.S.No.3/2, 3/3 situate at Velrampet, Puducherry of the applicant;*

c) *restraining the respondent and his men from alienating or dispossessing of the house of the applicant in any manner as provided under Sec.19(d) of P.W.D.V.Act.*

d) Ordering the respondent not to take any loan against the house, to mortgage it or to create any other financial liability involving the property in terms of Section 19(d) of the P.W.D.V.Act, 2005 and

e) directing the respondent to pay to the applicant a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) towards her house constructing expenditure and Rs.2,00,000/- (Rupees Two Lakhs Only) towards the permanent alimony and also a sum of Rs.3,000/- for both applicant and her tender aged child per month payable by the respondent as provided under Sec.22 of P.W.D.V.Act, 2005;"

4. Heard Mr.R.Chandrasekaran, learned counsel for the petitioner and Mr.E.J.Ayyappan, learned counsel for the respondent.

5. It is revealed from the averments of the petition in M.C.No.6 of 2009, that the marriage of the petitioner herein with the respondent was solemnised on 22.11.2001 at Puducherry. During the course of their wedlock, the respondent had delivered a female child on 18.09.2002. According to the respondent, the petitioner had not been acting properly and failed to act as a dutiful husband as well as dutiful father to his child. The petitioner on account of matrimonial dispute has been living separately. According to the respondent, the father of the petitioner herein had purchased two plots at

velrampet in his name as well as in the name of his wife Smt.Vijaya @ Vijayalakshmi under a registered sale deed dated 31.03.2001 bearing Doc.No.1360 of 2001. The property which was purchased under the said sale deed is comprised in R.S.No.189/2, 189/3 at Murungapakkam Revenue Village. The family affairs were taken and looked after by the father-in-law of the respondent. Since the petitioner has not been acting as a dutiful husband, by seeking any permanent job for his own, the petitioner's father (father-in-law) namely Ranganathan @ Devaraj died on 16.06.2009. After his sudden demise, the respondent has been suffering for their daily bread.

6. Under this circumstance, the respondent was forced to go for job to maintain her as well as her child. Out of the sale proceeds of her jewels, both she and her father-in-law had constructed a brick made house at velrampet in the plot purchased by the father-in-law and mother-in-law (parents of the petitioner herein). Now, the respondent has been living along with her mother. She has also alleged that the petitioner had treated her with cruelty and she has been suffering both physically and mentally at the hands of the petitioner. She does not find shelter for her own in the marital house and therefore, she is entitled to reside in her matrimonial home under Section 17(1)(s) of the Prevention of Women from Domestic Violence Act. Apart from this, she is also entitled to get her lawful share in the property of her father-in-law through

her husband who is the petitioner herein under Section 19(a) of the said Act. Section 19(d) provides the right to stay with her child in the matrimonial home. Under this circumstance, she was constrained to file the above said petition in M.C.No.6 of 2009 on the file of the learned Judicial Magistrate-I, Puducherry. She has also claimed that she is entitled to get compensation to the extent of Rs.5,00,000/- towards her house constructing expenditure and Rs.2,00,000/- towards permanent alimony and another sum of Rs.3,000/- for her as well as for her child under Section 20(1) & (2) of the said Act.

7. Mr.R.Chandrasekaran, learned counsel for the petitioner would submit that the petitioner herein is a physically challenged person and inspite of that he had been working as carpenter along with his father and getting Rs.1,000/- per month. The respondent had developed illicit intimacy with the father of the petitioner i.e., with her father-in-law and eloped with him. Since the petitioner is a physically challenged person, he needs care and attention of others. Mr.Chandrasekaran has also argued that the respondent being the wife of the petitioner had not fulfilled her part of marital obligation, instead she had eloped extra marital affairs with her father-in-law i.e., father of the petitioner by name Ranganathan @ Devaraj and since she had been living in adultery she was not entitled to maintain the petition in M.C.No.6 of 2009 on the file of the learned Judicial Magistrate No-I, Puducherry. Equally, she did

not have any right to claim protection under Section 12 of the Protection of Women from Domestic Violence Act.

8. He would further submit that the petitioner's mother one Vijaya @ Vijayalakshmi had also filed a petition for maintenance under Section 125(1)(a) of Cr.P.C., in M.C.No.17 of 2009 as against her husband before the Family Court at Puducherry.

9. It is pertinent to note here that the respondent has stated in her petition in M.C.No.6 of 2009 that her father-in-law Ranganathan @ Devaraj had died on 16.06.2009 but the grounds of this petition do not have any reference about the death of the petitioner's father. This Court also finds that the petitioner's mother had also filed a petition in M.C.No.17 of 2009 against her husband viz., the father of the petitioner and that petition is also still pending. It is also alleged in the grounds of petition that on 22.11.2001, the respondent herein had eloped with the petitioner's father Ranganathan @ Devaraj. When such being the case, how the petitioner's father Ranganathan @ Devaraj could have died on 16.06.2009.

10. This Court has carefully considered the submissions made by Mr.Chandrasekaran and Mr.E.J.Ayyappan. This Court has also perused the

grounds of the petition and keeping in view of the above fact and on considering all the related circumstances, this Court is of considered view that since the respondent has been living in adulterous life with her own father-in-law(father of the petitioner) she is not entitled to get any relief under her petition. She is also not entitled to maintain the petition in M.C.No.6 of 2009 under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

11. Keeping in view of the above said fact, this Court finds that the petition is deserved to be allowed and the petition in M.C.No.6 of 2009 is liable to be quashed. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings concerned in M.C.No.6 of 2009 pending against the petitioner on the file of the learned Judicial Magistrate, No-I,Puducherry are quashed. Consequently, connected miscellaneous petition is closed.

16.12.2016

Index:Yes / No
Internet:Yes / No
ssn

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T.MATHIVANAN, J.,

ssn

To

1. The Judicial Magistrate No.I,
Puducherry.

2. The Public Prosecutor,
High Court, Madras.

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and
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