

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2017

Date of Reserving the Order	Date of Pronouncing the Order
12.09.2017	11.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.27548 of 2012

and

M.P.Nos.1 & 2 of 2012

1.Rukmani
2.Venkatesh
3.Jayaprakash
4.K.Paramasivam
5.Palanisamy
6.Manivannan
7.Balaiya Naidu

... Petitioners / R1 to R6 & R9

-VS-

1.Manonmani
2.Santhanam
3.Subramani Gounder

... 1st Respondent / Complainant

... Respondents 2 & 3/Respondents 7 & 8

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PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure seeking to quash the proceedings in M.C.No.10 of 2012, on the file of the Judicial Magistrate Court No.II, Tindivanam,

filed under Section 12 of the Protection of Women From Domestic Violence Act, 2005.

For Petitioners : Mr.R.Karunagaran

For Respondents : No appearance

ORDER

This criminal original petition has been filed by the petitioners / Respondents 1 to 6 and 9 seeking to quash the proceedings in M.C.No.10 of 2012, pending on the file of the Judicial Magistrate Court No.II, Tindivanam, filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter, referred to as "the Act") by the first respondent / complainant.

2. On 21.12.2001, the first petitioner / first respondent entered into a sale agreement with the first respondent / complainant. The second petitioner / second respondent is the son of the first petitioner / first respondent. The third petitioner / third respondent is the mediator, who had negotiated the deal between the first petitioner / first respondent and the first respondent / complainant. However, later, the subject property had been sold by the first petitioner / first respondent to the fourth petitioner / fourth respondent

through the power agent, namely, the fifth petitioner / fifth respondent. The sixth petitioner / sixth respondent is a person, who is alleged to have committed interference in respect of the property and the seventh petitioner / ninth respondent is a person, who had induced violence against the first respondent / complainant. Though the son and the husband of the first respondent / complainant were also impleaded as respondents 7 and 8 in the complaint, later, they have filed their counter supporting the case of the first respondent and praying to treat them as approvers and rebutting the relief sought for.

3. The brief facts remain that on 21.12.2001, the first petitioner entered into a sale agreement with the first respondent. The third respondent in this petition, who is shown as eighth respondent in the complaint in M.C.No.10 of 2012 before the Magistrate Court. Since the petitioners had failed to abide by the terms of the sale agreement, the third respondent being the husband of the first respondent, who has been shown as eighth respondent in M.C.No.10 of 2012, had filed a suit for specific performance. While so, in the year 2012, the first respondent had filed M.C.No.10 of 2012 praying for the following reliefs:

Under Section 18 of the Act:

Injunction restraining the respondents 1 to 9

therein from enjoyment of the properties under the sale agreement, dated 21.12.2001.

Temporary injunction restraining the respondents 1 to 9 therein from creating encumbrance in respect of the properties under the sale agreement, dated 21.01.2001

To stop the respondents from preventing the first respondent from living in the property under the sale agreement, dated 21.12.2001.

Not to make any alteration, improvement and maintenance in respect of the punja, nanja and house under the sale agreement, dated 21.12.2001.

Under Section 20 of the Act:

To direct the respondents 1 to 6 and 9 to pay damages of Rs.5,00,000/- towards the loss suffered on account of the encumbrance created over the property under the sale agreement.

Under Section 21 of the Act:

To direct the respondents 1 to 6 and 9 to pay Rs.5,000/- monthly maintenance towards medical, food and litigation expenses.

Under Section 22 of the Act:

To direct the respondents 1 to 6 and 9 to pay damages at the rate of Rs.5,00,000/- for the hardship and loss suffered by her on account of

the breach of the agreement of sale, dated 21.12.2001.

4. Though reliefs were sought for as against the petitioners, the respondents 2 and 3, being the son and husband of the first respondent, who have been shown as respondents 7 and 8 in M.C.No.10 of 2012, have cleverly and conveniently filed their counter stating that the reliefs sought for by the first respondent as against the other petitioners can be ordered.

5. A perusal of the records shows that all these prayers and reliefs sought for by the first respondent / complainant are in respect of the alleged agreement for sale and no relief was sought for by the first respondent / complainant for invoking the provisions of the Protection of Women From Domestic Violence Act, 2005. Though notice was ordered to the respondents in this criminal original petition and though the counsel had filed a memo on behalf of the first respondent, neither the first respondent nor her counsel entered appearance in spite of several opportunities given to them.

6. This Court in an earlier judgment reported in **2017 (2) TNLJ 406 (Criminal) Sowdambal & 4 others vs. Meena**, had refused to

quash the proceedings under the Domestic Violence Act, on the ground that truth or falsity of the averments made in the petition cannot be gone into in the Criminal Original Petition. In fact, in that case there were no sufficient material to quash the proceedings since the facts alleged by the petitioner was not supported by any concrete evidence. However, in this case the very reading of the complaint shows that it is an illustrious case of misuse and abuse of the provisions of the Domestic Violence Act and the first respondent had attempted to settle the claim in respect of a civil dispute by wrongly invoking the provisions of the Domestic Violence Act.

7. The learned counsel for the petitioners contended that only in order to take revenge as against the petitioners for not selling the property under the alleged sale agreement, the first respondent had invoked the provisions of the Domestic Violence Act. The learned counsel for the petitioners further submitted that the first respondent is not an aggrieved person and that the petitioners neither had any domestic relationship with the first respondent and they have never lived in a shared household. Therefore, it is necessary to refer the following Sections of the Domestic Violence Act:

"Section 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;

(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;

(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;]**

(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 house hold 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 household;"

8. Heard the learned counsel for the petitioners and perused the records.

9. Admittedly, the petitioners and the respondent are not related by way of consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. Further there is absolutely no material to show that the petitioners and the respondent are having any domestic relationship and they are living in a shared household and that they have committed any act necessitating the initiation of proceedings against them under the Domestic Violence Act. Admittedly, there had been a dispute in respect of a sale agreement and subsequently, a suit had also filed by the third respondent, who is the husband of the first respondent and shown as eighth respondent in M.C.No.10 of 2012. Hence, it is clear that the provisions of the Domestic Violence Act had

been misused by the first respondent to put pressure on the petitioners to compel them to sell the property under the alleged sale agreement, dated 21.12.2001. At Page No.7 of the typed set filed along with this criminal original petition, a copy of the plaint in O.S.No.389 of 2009 filed by the third respondent has been enclosed. It is a suit for specific performance. It is an admitted case that a civil dispute was pending between the relatives of the petitioners and the first respondent.

10. This Court, on perusal of the materials on record, is convinced that there is no material to make out a prima facie case of domestic violence, however, an attempt has been made by the first respondent to misuse the provisions of the Domestic Violence Act, which was enacted with laudable object to provide for remedies, such as, protection to the affected women. The respondents 2 and 3, who are the son and husband of the first respondent had conveniently colluded with each other and filed a petition seeking permission of the Court to treat them as approvers and also supported the case of the first respondent and prayed that the reliefs sought for by the first respondent may be granted as prayed for. This Court is surprised how the learned Magistrate, without going into the provisions of the Act and

without reading the complaint, in a proper perspective had issued summons to the petitioners. As already discussed, there are enough materials to show that the first respondent / complainant and her son and husband have colluded to drag the petitioners to Court by filing the present vexatious complaint though no domestic violence has been caused against the first respondent / complainant. In such view of the matter, the complaint pending before the Magistrate Court as against the petitioners herein is nothing but a vexatious and ill-motivated, which deserves only to be quashed.

11. In the result, the criminal original petition is allowed and the proceedings in M.C.No.10 of 2012, on the file of the Judicial Magistrate Court No.II, Tindivanam, filed under Section 12 of the Protection of Women From Domestic Violence Act, 2005, as against the petitioners herein are hereby quashed. Consequently, connected miscellaneous petitions are closed.

Internet : Yes / No
Index : Yes / No

gr. / krk

To:
The Judicial Magistrate No.II,
Tindivanam.

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A.D.JAGADISH CHANDIRA, J.

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