

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2017

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P.No.1206 of 2011

Gnanalatha ... Petitioner/4th Respondent

vs.

K.Gunavathy ... Respondent / Petitioner

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to the case in CMP.No.1793 of 2010, on the file of the Judicial Magistrate No.I, Cuddalore, order and to order for the quash of the same.

For Petitioner : Mr.N.Bhaskhaaran

For Respondent : No Appearance

JUDGMENT

The petitioner was arrayed as 4th respondent in the above domestic violence petition.

2.The case of the parties in a nutshell is as follows:

The marriage of the respondent herein with her husband S.Ilangovan, who is the first respondent in the above Crl.M.P.No.1793 of 2010 was solemnized on 11.02.1993. Out of the said marriage a male child was born to them. The second respondent in the above petition is the mother and third respondent is the elder brother of the first respondent S.Ilangovan. It is alleged in the said petition that as if the petitioner herein is living adulterous life with the husband of the respondent herein.

3.It is the case of the petitioner that she has no nexus with the family member of the respondents 1 to 3 or the family member of the respondent herein. The petitioner herein is working as a teacher at St. Annes Higher Secondary School at Cuddalore. She has been unnecessarily impleaded as 4th respondent in the petition filed by the respondent herein under section 12 of the Protection of Women from Domestic Violence Act.

4.It is her further case that the learned Magistrate without applying the mind issued summons to the petitioner to appear before the court. She further stated that the petition itself was not filed as per Form-II prescribed under the Protection of Women from Domestic Violence Act. Since the petitioner herein is neither a family member nor having any domestic relation with the family of the respondent herein or her husband and therefore the petition filed under section 12 of the Protection of Women from Domestic Violence Act against the petitioner herein is liable to be quashed.

5.The Learned Counsel appearing for the petitioner has vehemently contented that the above proceedings against the petitioner herein is an abuse of the process of law, since she is no way connected or having domestic relationship with the respondent herein or husband and therefore petition filed under section 12 of the Protection of Women from Domestic Violence Act would not have attracted against the petitioner herein. Hence the learned counsel prays this court to quash the above proceedings in so far as the petitioner is concerned.

6.There is no appearance for the respondent, though notice was served on her.

7.I have carefully considered the submission made by Mr.N.Bhaskaran, learned counsel for the petitioner and perused the materials available on record.

8.In this case, the only question to be decided that whether the petitioner herein would come under the definition of family member of the respondent herein or her husband so as to attract the provision of Section 12 of the said Act.

9.To decide the said issue it is useful to extract section 12 of the Protection of Women from Domestic Violence Act, 2005 hereunder:

12. Application to Magistrate:-

(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act: Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent: Provided that where a decree for any amount as

compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

10. A perusal of the section 12 of the Protection of Women from Domestic Violence Act abundantly makes it clear that who are the aggrieved person. There is no doubt that the respondent herein is an aggrieved person. Admittedly in this case the petitioner herein is a stranger to the respondents 1 to 3 in CrI.M.P. No.1793 of 2010. The respondents 1 to 3 alone are the family members of the respondent herein and they are coming within the definition of section 12 of the Protection of Women from Domestic Violence Act. Therefore implicating the petitioner herein as 4th respondent by the respondent herein in a petition filed by her under section 12 of the Protection of Women from Domestic Violence Act, in the considered opinion of this court is nothing but sheer abuse of process of the law. However the quashing of this complaint will not stand as a bar over respondent to avail remedy before IPC or any other Act.

11. In view of foregoing reason, this is a fit case to exercise the inherent powers conferred to this Court under section 482 of Cr.P.C and hence, I have no hesitation to hold that above the petition is an abuse of process of the law and the same is liable to quash and accordingly, it is quashed. Hence, this Criminal Original Petition is allowed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

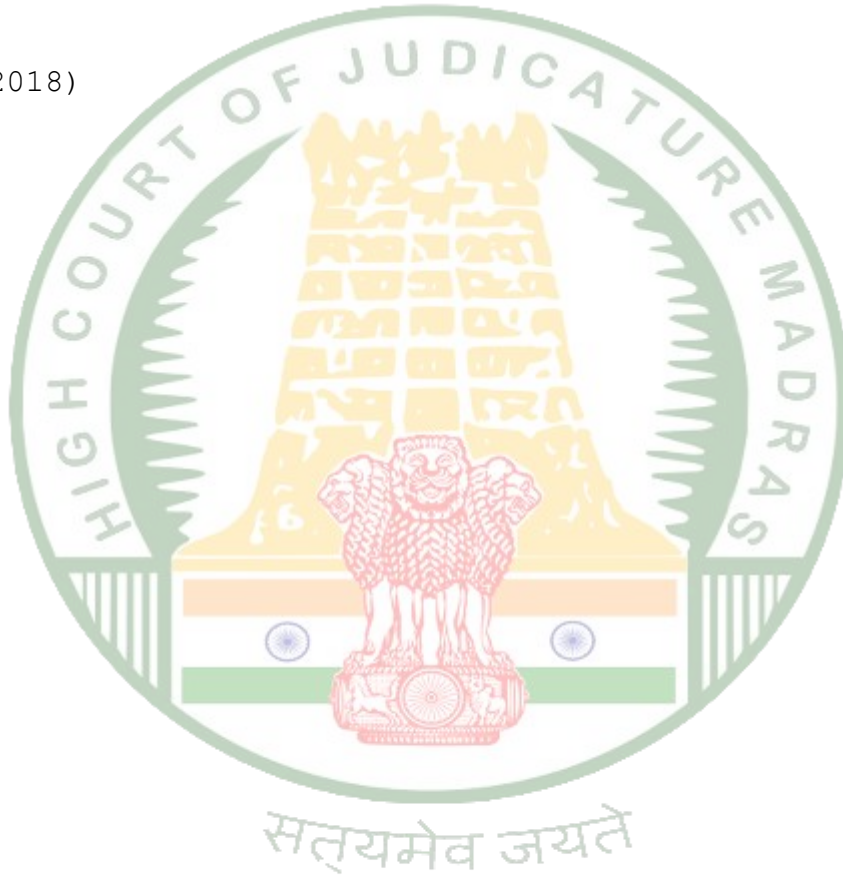
vs

To

The Judicial Magistrate No.I,
Cuddalore.

CrI.O.P.No.1206 of 2011

(CS-DR)
EU(31/10/2018)



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