

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.26276 of 2014 &
M.P.No.1 of 2014

1. Sowdammal
2. Nithyanantham
3. Chandra
4. Lakshmi
5. Munusamy

.. Petitioners

Vs.

Meena

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to M.C.No.5/2014 on the file of Judicial Magistrate, Ambur and quash the same.

For Petitioners : Mr.T.Muruganantham

For Respondent : Mr.G.Vinodh Kumar

ORDER

1. The Criminal Original Petition has been filed by the petitioners who are respondent Nos.3,4,6,7 and 8 in M.C.No.5 of

2014, pending on the file of the Judicial Magistrate, Ambur, Vellore District.

2. The learned counsel for the petitioners submit that on the basis of the petition filed by the respondent herein against the petitioners by invoking Section 12 of the Domestic Violence Act, before the Judicial Magistrate, Ambur, the same has been taken on file as M.C.No.5 of 2014 and the same is pending.

3. As per the petitioners, averments in the complaint according to the respondent is that on 18.08.2013, one Chandru, the first respondent in the Domestic Violence Proceeding is alleged to have entered into the house of the respondent and committed rape upon her. Upon the hue and cry raised by the respondent, her parents and neighbours gathered and they conducted panchayat and as per the panchayat, on 19.08.2013 the marriage between the respondent and the said Chandru was solemnized. Further the allegation in the complaint is that after the marriage, the petitioners herein who are the blood relatives of Chandru did not like the marriage and started harassing her and also alleged to have arranged for the marriage of Chandru with one Sathyavani. Hence

the above petition was filed by the respondent, by invoking Section 12 of the Domestic Violence Act, before the Judicial Magistrate, Ambur.

4. Heard Mr.T.Muruganantham, learned counsel for the petitioners and Mr.G.Vinodh Kumar, learned counsel for the respondent.

5. The contention raised by the petitioners is that they are residing separately, away from Chandru and they are not at all concerned with the marriage between Chandru and Meena and that they have been falsely roped in with a view to harass them and moreover the averments stated in the complaint are exaggerated, improbable, false and ex-facie, the same has to be quashed in respect of the petitioners.

6. However, Mr.G.Vinod Kumar, learned counsel appearing for the respondent strongly objected that the respondent has been subjected to severe Domestic Violence by the petitioners and that it can be proved only after examination of the respondent and prayed for dismissal of the quash petition.

7. This Court had gone through the complaint and feels that the truth or falsity of the averments made in the petition cannot be gone into in this Criminal Original Petition and that the Court below conducting the proceedings can come to a conclusion only after examining the witnesses and thereby the proceedings cannot be quashed at the threshold.

8. The learned counsel for the petitioners relied on a Judgment of this Hon'ble High Court, reported in **CDJ 2010 MHC 6597**. Relevant paragraphs of the Judgment are extracted hereunder:-

"The learned counsel for the petitioner has invited the attention of this Court to the averments in the application filed under Section 12 of the Protection of Women from the Domestic Violence Act and has argued that those are all mere narrations and not backed by probable or possible evidence. According to him, the summons issued also to the petitioners is one nomenclatured as summons to the accused person, which itself is not tenable. The petitioners are having avocation of their own and if they are dragged to the Magistrate Court, then they will not be able to

carry on with their day today work.

8. At the outset the Magistrate was not right in issuing the summons to the accused person in this case invoking Section 61 of the Code of Criminal Procedure. The learned counsel for the petitioners in this petition would appropriately and appositely refer to Section 13 of the Protection of Women from Domestic Violence Act, which is extracted hereunder for ready reference: "13. Service of notice. (1) A notice of the date of hearing fixed under Section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.

(2) A declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved." Along with that, I would like to refer to Section 28 of the said Act, which reads as follows:

"28. Procedure. (1) Save as otherwise provided in this Act, all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the Court from laying down its own procedure for disposal of an application under section 12 or under sub- section (2) of section 23."

9. A mere reading of Section 13 of the said Act would amply make the point clear that at the initial stage, the Magistrate was not justified in treating the respondents in this case as accused and as such, hereafter relating to applications under Section 12 of the Protection of Women from Domestic Violence Act, the Magistrate should not issue summons under Section 61 Cr.P.C. treating the respondents as accused. What is contemplated under Section 13 of the Act is a notice specifying the date etc., The endeavour should be on the part of the officer concerned is to deal with the matter gently and treating the respondents in a gentle manner and that should not be lost sight of. Unless the appearance of the respondents are absolutely necessary on a particular date, they

should not be simply harassed by compelling them to appear as though they are offenders. The Magistrate should not lose sight of the fact that so long as the case is anterior to the protection order being passed, they should be treated only as respondents. However, after the order under Section 18 of the Act is passed and if there is violation, then the proceedings might get changed and become criminal proceedings. As such, the Magistrates hereafter would scrupulously adhere to the mandates contained in the Act itself.

10. The contention of the learned counsel for the petitioner in this Criminal Original Petition is that the case of the petitioner in the petition filed under the Protection of Women from Domestic Violence Act is false. The truth or falsity of the averments made in the petition filed under domestic violence case cannot be gone into, now in this criminal original petition in view of the dicta as found set out in the decisions cited supra. In fact, before passing the Protection Order under Section 18 of the said Act enquiry has to be conducted, only with an intention to bring together the parties. The protection officer as well as the Magistrate should encourage and enthrust the parties to

bury the hatchet and have peaceful living mixed with harmony and understanding. This Court while exercising its jurisdiction under Section 482 of Cr.P.C. at this stage is not expected to interfere and stall the proceedings also.

11. Paramount, it is, to consider the gamut and the scope of the Act, namely The Protection of Women from Domestic Violence Act, 2005; certain excerpts from the objects and reasons are of immense importance which would run thus:

"2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a women is subjected to cruelty by her husband or his relatives, it is an offence under Section 4980A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect

the woman from being victims of domestic violence and to prevent the occurrence of

domestic violence in the society."

12. The term 'civil law' twice used therein is not an empty formality and that would exemplify and demonstrate, display and convey that the proceedings at the first instance should be civil in nature. The legislators were conscious of the fact that all of a sudden if criminal law is enforced on the husband and his relatives, certainly that might boomerang and have deliterious effect in the matrimonial relationship between the husband and wife. The object of the Act is that the victim lady should be enabled by law to live in the matrimonial family atmosphere in her husband/in-laws' house. It is not the intention of the said enactment to enable the lady to get snapped once and for all her relationship with her husband or the husband's family and for that, civil law and civil remedies are most efficacious and appropriate and keeping that in mind alone in the Act, the initiation of action is given the trappings of civil proceedings which the authorities including the Magistrate responsible to enforce the said Act should not loose sight of.

13. The status of the respondents should not be treated as that of accused and that would

spoil the very tenor and tone with which the Act has been drafted. Keeping that in mind alone, Section 13 of the Act would contemplate only service of notice on the respondents and Rule 6(5) of the Protection of Women from Domestic Violence Rules, would contemplate that the applications under Section 12 shall be dealt with in conformity with Section 125 of the Code of Criminal Procedure, 1973.

14. It is obvious that the proceedings under Section 125 Cr.P.C are not in stricto sensu criminal proceedings.

15. After the passing of the protection order, if there is any violation, then only, such violation would constitute an offence under Section 31 of the said Act and Section 32 of the Act would indicate that such violation would amount to a cognizable and non-bailable offence.

16. It is, therefore, clear that the initial proceedings are civil in nature and the learned Magistrate should be extraordinary careful in selecting the appropriate persons as the respondents. Simply because the application under Section 12 of the Act might refer to large number of persons as respondents, the learned Magistrate is not duty bound to issue notice to all of them and there should be

application of mind on the part of the Magistrate in selecting the respondents as to whom notice should be sent, as otherwise having too many respondents before the learned Magistrate, would constitute a stumbling block for arriving at a conclusion in summary proceedings. The famous adage "Too much of anything is good for nothing" should not be forgotten.

17. *As such, keeping in mind the spirit of the Act and the purpose sought to be achieved, the learned Magistrate should process the application.*

18. *As such, at this stage, this Court cannot simply quash the proceedings under the Protection of Women from Domestic Violence Act on the ground that the petitioners in the Criminal Original Petition state that the allegations made in the Domestic Violence Act are all false.* सत्यमेव जयते

19. *The learned counsel for the petitioners would submit that the parties are at Chennai and the 1st petitioner is the husband, the second petitioner is the father of A1, the 3rd petitioner is the mother of A1, the 4th and 5th petitioners are the brothers of A1 and the 6th petitioner is the wife of A5 and it is difficult for*

them to appear before the Magistrate on every hearing.

20. Ex-facie and prima-facie, it is clear that the husband, his parents and his relatives have been summoned as accused, which the Magistrate could have avoided. Hence, I would like to sensitize that let the Magistrate apply his mind as to whether the presence of the respondents is absolutely necessary on a particular date and accordingly, send notice to such of those persons whose presence are absolutely necessary. The Magistrate shall see that the matter is dealt with as expeditiously as possible. Whenever any one or more of the respondents seek to get excuse from their absence in the proceedings, they are at liberty to petition the Magistrate which shall be considered sympathetically, but without detriment to the proceedings."

9. The learned counsel appearing for the petitioners prayed that they have been unnecessarily roped in and submitted that their presence may be dispensed with and gave an undertaking that the petitioners will be represented through a counsel on all hearings without fail and also submitted whenever their presence are

absolutely necessary they will appear before this Court and prayed that their presence before the Judicial Magistrate, Ambur, may be dispensed with.

10. Taking into consideration, the submissions of the learned counsel for the petitioners and the documents furnished in the type-set, which shows that the petitioners are residing elsewhere, the personal appearance of the petitioners before the Judicial Magistrate, Ambur is dispensed with. However, it is made clear, whenever their presence is necessary for the proceedings and on being insisted by the Presiding Officer they have to appear before the Court.

11. In the result, the Criminal Original Petition is dismissed. The Judicial Magistrate, Ambur, is directed to complete the proceedings as per the statutory mandate mentioned under Section 12(5) of the Act, 2005. Consequently connected miscellaneous petition is closed.

22.09.2017

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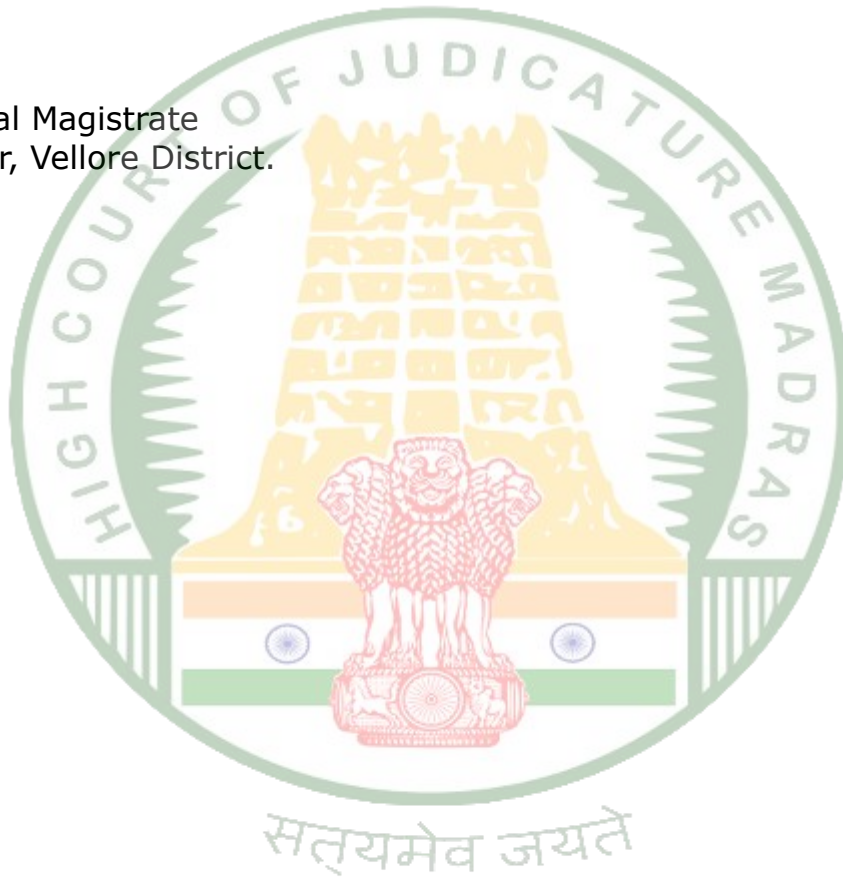
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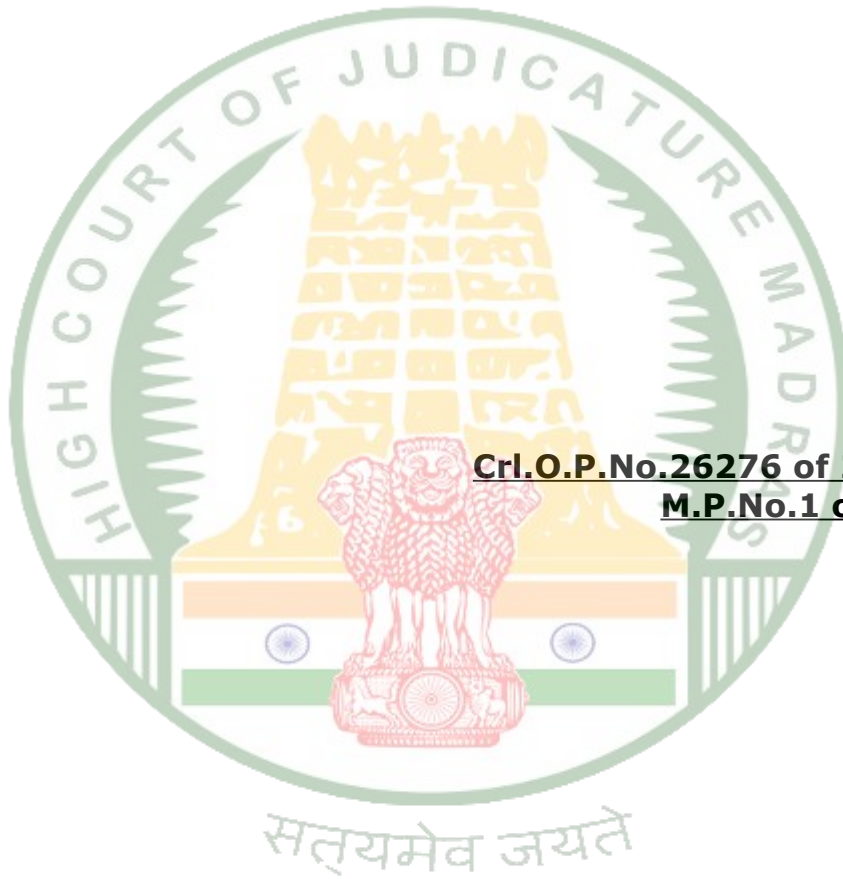
1. Judicial Magistrate
Ambur, Vellore District.



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A.D.JAGADISH CHANDIRA,J.,

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