

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.11603 of 2010

and

M.P.Nos.1 and 2 of 2010

A.Udayakumar

.. Petitioner/Respondent
Husband

vs.

1.The Protection Officer,
Domestic Violence Act,
No.43, II-Street, Gandhi Nagar,
Near IOB Collectorate,
Chevallimedu, Kancheepuram. ...1st Respondent/Complainant

2.G.Jothi ...2nd Respondent/Defacto
Complainant/Wife

Prayer: Criminal Original Petitions filed under Section 482 of Criminal Procedure Code, to call for the records in CMP.No.2462 of 2010 on the file of the learned Judicial Magistrate, Tambaram and quash the same.

For Petitioner : Mr.V.Vijayakumar

For Respondents: Mr.B.Ramesh Babu (for R1)
Government Advocate (Crl. Side)

No Appearance (for R2)

JUDGMENT

Brief facts are necessary for disposal of this instant Criminal Original Petition is that the petitioner herein and the 2nd respondent are husband and wife. Both of them are working under central government. Their marriage took place on 4th February 1988, and out of the said wed lock they have blessed with two children. Their marriage life became a misery and misfortunate because of the disputes and misunderstanding developed amongst them on various reasons, which often lead to serious attacks.

2.According to the petitioner herein, the 2nd respondent lead an immoral life, whereas, according to the 2nd respondent it

was the petitioner who lead an immoral life.

3.On perusal of the case records it reveals that both the parties are leveling serious allegations against each other.

4.In many occasions such perpetual quarrel went up to the police authorities and their departmental superiors to sort out their matrimonial dispute. However, there was no amicable settlement arrived between the petitioner and 2nd respondent herein.

5.It is the case of the petitioner that since their marital life broken down he issued a legal notice dated 08.11.2008 calling for the 2nd respondent for consent for mutual divorce. But there was no reply from the 2nd respondent herein, therefore with no other go he filed a petition for divorce against the 2nd respondent in H.M.O.P.No.264 of 2009 on the file of Subordinate Court at Tambaram. After service of summon the 2nd respondent without contesting the divorce petition with an ulterior motive and to wreck vengeance over the petitioner has preferred a false complaint under Domestic Violence Act for protection, residence & maintenance orders under Sections 18, 19 and 20 respectively before the 1st respondent.

6.The 1st respondent herein having conducted an enquiry into the complaint preferred the above criminal complaint in C.M.P.No.2462 of 2010 on the file of the Judicial Magistrate, Tambaram and the same was taken on file.

7.Aggrrieved over the same the present Criminal Original Petition is filed. The prime grounds of attack of the petitioner, over the 2nd respondent's complaint is that the 2nd respondent cannot maintain the above complaint for maintenance since being a government staff employed under Income Tax Department. Further the 2nd respondent cannot seek for maintenance of the petitioner's son and daughter who are major by age. The 2nd respondent cannot invoke the provisions of domestic violence act, as she was not in a domestic relationship with this petitioner from the year 2006, that she left the petitioner in the year 2006 and is living separately from 21.12.2006.

8. Now looking into the complaint on hand, from page No.5 of the complaint it is noticed by this Court that on the alleged date of desertion made by the 2nd respondent i.e. on 21.12.2006, there is a quarrel between the petitioner and the 2nd respondent. On further reading, from paragraph 3 in page No.5 of the complaint the 2nd respondent states that thereafter the above incident of harassment she continued to live with the petitioner in her matrimonial house for the sake of her children. Again after narrating a sequence of allegations said to have been taken place thereafter on 12.04.2007 and 09.06.2007, the 2nd respondent states that she was forced to get out of her matrimonial house by the petitioner herein.

9. Further it is disclosed from the complaint dated 12.04.2007 lodged by the 2nd respondent before the police authorities which is annexed in page No.18 of the typed set of papers it reads that the 2nd respondent has sought for police protection alleging that at relevant point of time, in days and nights she is being ill treated and harassed by the petitioner herein. Therefore in view of the available records on file, this Court is prima facie not inclined to accept the bald averment that the 2nd respondent has deserted the petitioner on 21.12.2006 and she is not in a domestic relationship. No convincing documents are produced by the petitioner to that effect.

10. In so far as the other ground raised by the petitioner, it would be appropriate to be decided only after conclusion of a fair trial to be undergone and supported by sufficient oral and documentary evidence of either sides.

11. It is needless to say that in view of the above facts, this Court is of the opinion that the case on hand is not a fit case to exercise its inherent power, which is to be exercised cautiously and sparingly to prevent abuse of process of law and to secure the ends of justice.

12.In the result, this Criminal Original Petition stands dismissed. The trial Court is hereby directed to complete the trial within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Judicial Magistrate,
Tambaram.

2.The Protection Officer,
Domestic Violence Act,
No.43, II-Street, Gandhi Nagar,
Near IOB Collectorate,
Chevallimedu, Kancheepuram.

3.The Public Prosecutor
High Court, Madras

+1 cc to Mr.V.Vijayakumar Advocate sr 86963

Crl.O.P No.11603 of 2010
and
M.P.Nos.1 and 2 of 2010

kj(co)
aa02/01/2018

WEB COPY