

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.03.2017

CORAM

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

Crl.O.P.Nos.24777 and 19113 of 2010
and
M.P.Nos.1, 1, 2 and 2 of 2010

1.Venkatesan

2.Sarojini

.. Petitioners in
Crl.O.P.No.24777/2010

Chitra

.. Petitioner in
Crl.O.P.No.19113/2010

vs

Vanaja

Sundaramoorthy

.. Respondents 1 & 2
in Crl.O.P.Nos.
24777 & 19113/2010

Chitra

.. Respondent No.3
in Crl.O.P.24777/2010

Sarojini

Venkatesan

.. Respondent No.3 in
Crl.O.P.No.24777/2010
and Respondent No.4 in
Crl.O.P.No.19113/2010

Prayer: Criminal Original Petitions filed under Section 482 of Code of Criminal Procedure, to call for the records in Crl.M.P.No.820 of 2009 on the file of the Judicial Magistrate No.IV, Salem and to quash the same as illegal and abuse of process of law.

For Petitioners : Mr.M.Thikvijayapandian

For Respondents : No Appearance for
1st respondent in
Crl.O.P.No.19113/2010

COMMON ORDER

These Criminal Original Petitions have been filed by the petitioners to call for the records in Crl.M.P.No.820 of 2009 on the file of the learned Judicial Magistrate No.IV, Salem and to quash the same.

2. Since both the petitions have been filed to quash the same Crl.M.P.No.820 of 2009, both the petitions were heard together and disposed of by this common order.

3. For the sake of convenience, the parties are referred to as per their array in Crl.O.P.No.24777 of 2010.

4. The 1st respondent had filed Crl.M.P.No.820 of 2009 under Section 12 of the Protection of Women from Domestic Violence Act, 2004 (hereinafter referred to as "Domestic Violence Act") before the learned Judicial Magistrate No.IV, Salem alleging that the marriage between the 1st respondent and the 2nd respondent was solemnized on 22.2.2007 at Samayapuram temple and at the time of marriage, seven sovereign of gold jewels, house hold vessels, cot, cloths etc. were given to her. It is alleged that after the marriage, the 1st respondent lived with the 2nd respondent for three months and thereafter, the 2nd respondent started ill-treated her along with the petitioners. Even they have not provided food to her and the 2nd respondent often returning home at late night. When the 1st respondent questioned the same, the 2nd respondent threatened her by saying that he will kill her. While so, during May 2000, the police personnel came to the house and searched the 2nd respondent. On an enquiry, she was informed that 2nd respondent misappropriate a sum of Rs.8 lakhs by acting as police and thereafter, he was absconding. When 1st respondent asked the petitioners in both the petitions, they scolded the 1st respondent and ill-treated her.

5. On 22.11.2008, the 1st respondent asked the petitioners 1 and 2 in Crl.O.P.No.24777 of 2010 about her life and at that time, the petitioners 1 and 2 and the petitioner in Crl.O.P.No.19113 of 2010, who came there used an unparliamentary words and beaten her. They have also directed the 1st respondent

to get out of the house . In that situation, the 1st respondent left the home and residing in her parental home. The petitioners and the 2nd respondent were threatening the 1st respondent by demanding her to sign in the divorce paper and the 1st respondent is struggling without money for her livelihood.

6. I heard Mr.M.Thikvijayapandian, learned counsel for the petitioners. None appears on behalf of the respondents 1 and 2 in both the Criminal Original Petitions. Perused the materials available on record.

7. The petitioners in both the petitions have seeking to quash the CrI.M.P.No.820 of 2009 on the following grounds:

- (a) No cause of action for the complaint.
- (b) No direct allegation against the petitioners in both the petitions.
- (c) Without following the procedures contemplated under the Domestic Violence Act, the 1st respondent has filed the complaint.
- (d) No harassment by the family members.

8. According to the petitioners, due to misunderstanding between the respondents 1 and 2, the 1st respondent left the matrimonial home and living with her parents for several years. Despite several efforts for the re-union of the respondents 1 and 2, the 1st respondent never cared for the same and failed to give any respect to them.

9. According to the petitioners, the 1st respondent was already married to a person and her husband died due to the ill-treatment of the 1st respondent and suppressing the said facts, the 1st respondent married the 2nd respondent and only subsequent to the marriage, the 2nd respondent came to know the same.

10. It is the say of the petitioners that the 1st respondent lodged a complaint before the Town Police Station, Salem against the petitioners in both the petitions and after an enquiry, the police found that there was no truth in the said complaint and closed the complaint.

11. Section 12 of the Domestic Violence Act reads thus:
"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, 12 of 18 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."

12. Under Section 12 of the Domestic Violence Act, an application has to be presented by an aggrieved person, either by the person herself or a Protection Officer or any other person on behalf of the aggrieved person to the Magistrate, seeking relief as provided under the Domestic Violence Act. A proviso has been added to Section 12(1) of the Domestic Violence Act, that before passing any such order on any application received, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the Service Provider.

13. It appears from the records that no such report either from the Protection Officer or from the Service Provider was received by the learned Magistrate. Nothing has been produced by the petitioners to show that the learned Magistrate has acting against the provisions of the Act. The grounds on which the petitioners seek to quash CrI.M.P.No.820 of 2009 are matter of evidence and the same cannot be decided in these petitions.

14.In the result, both the Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

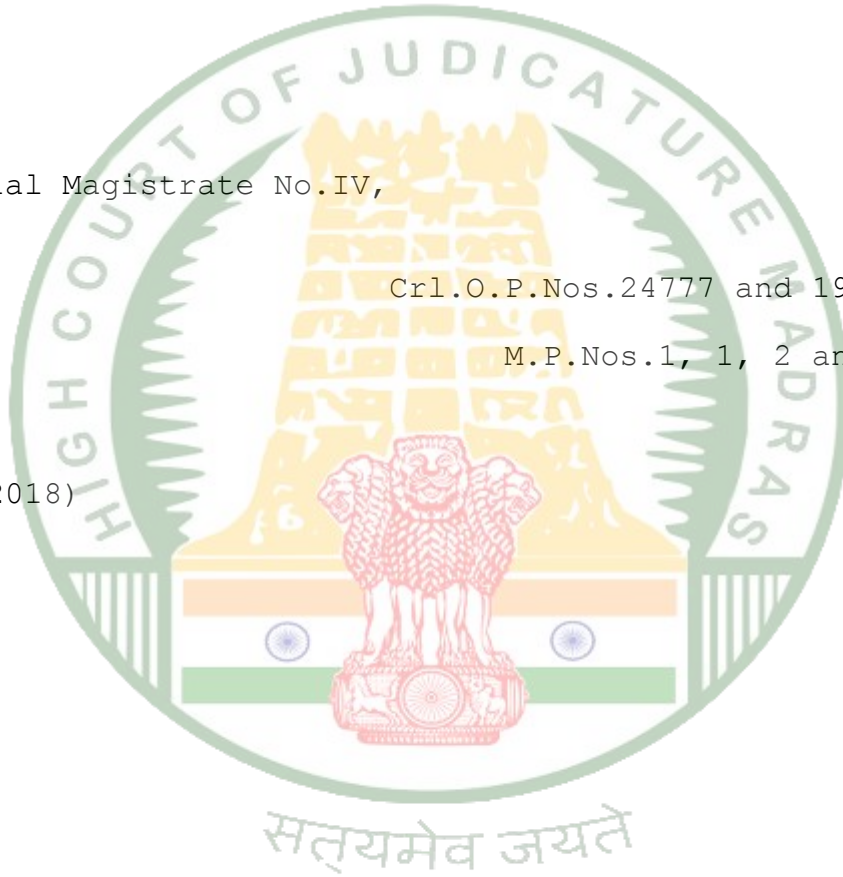
vs

To

The Judicial Magistrate No.IV,
Salem.

CrI.O.P.Nos.24777 and 19113 of 2010
and
M.P.Nos.1, 1, 2 and 2 of 2010

GN(30/10/2018)



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