

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.07.2017

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

RESERVED ON :10.07.2017

PRONOUNCED ON :.....07.2017

CrI.OP No.29254 of 2010

and

M.P.No.1 of 2010

1.R.Thayalan

2.Prema

.. Petitioners

Vs

1.Dr.Vidya

2.Baby.Sivasanthosh
rep.by mother Dr.Vidya

.. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the complaint in D.V.A.No.8 of 2010,STC No.271 of 2010 on the file of the Judicial Magistrate No.VI, Coimbatore, quash the same.

For Petitioner

:Mr.N.Manokaran

For Respondent

:Mr.R.C.Paul Kanagaraj

ORDER

This Criminal Original Petition has been filed, to call for the records pertaining to the complaint in D.V.A.No.8 of 2010,STC No.271 of 2010 on the file of the Judicial Magistrate No.VI, Coimbatore and to quash the same.

2. The short facts of this case is that the first respondent was married to one Dr.R.P.Sriram Ganesh and the second respondent is born to them. The petitioners herein are the parents of the said Dr.R.P.Sriram Ganesh. The marriage between the first respondent Dr.Vidya and the Dr.R.P.Sriram Ganesh was solemnized on 24.01.2007 and the second respondent herein was born on 21.08.2008 and in view of the certain misunderstanding and alleged cruelty, the first respondent has moved the Family Court, Coimbatore in H.M.O.P.No.917 of 2008 under Section 13(1)(i-a) Hindu Marriage Act in an exparte decree was passed on 10.07.2009. The first respondent herein has moved D.V.A.8/10 under Section 18(a)(b)(c)(d)(f) and 19(c) and 21 of the Protection of Women from Domestic Violence Act,2005 alleging that she was subjected to Domestic Violence by her husband and in laws and the case was taken on file on S.T.C.No.271 of 2010 and in that a criminal Miscellaneous Petitions No.3348 of 2010 has moved for interim custody of the minor boy.

3. The learned Judicial Magistrate No.VI, Coimbatore by an order dated 28.04.2010 has recorded that *"prima facie case is made out regarding the domestic violence between the petitioner and the 1st respondent. Naturally the mother is the natural guardian of that child and he is under the 3 months old age. At this age, only the mother can be able to take care of the child. Under this Circumstance it is ex-party ordered for custody of the child with his mother (i.e) the petitioner. This is an interim order. Issue notice to the respondent"*.

4.Challenging the said order, the father-in-law and mother-in-law who had arrayed as accused No.2 and 3 in the case under Domestic Violence Act, has preferred this Criminal Original Petition.

5. The learned counsel for the petitioner has submitted that the averments made in the Domestic Violence complaint are not sufficient enough for trying the case under the Act and there is no specific overtact against them except bold allegations and hence, seeks to quash the proceedings in respect of them.

6. Heard the submissions made by the learned counsel for the respondent.

7.After perusing the complaint filed before the Judicial Magistrate No.VI, Combatore, this Court finds that there are specific allegations against the present Revision Petitioner in para 5, para 6 and middle of the para 7 and further, there is a specific allegation in para 9 about the pendency of the civil proceedings and the act and manner in which the accused have acted and alleged to have conducted themselves on the dates mentioned therein.

8.After going through the complaint filed before the Trial Court, this Court is of the considered view that there is sufficient material available on record and those allegations have not mere bold and vague allegations as contended by the Revision Petitioner. In fact, she also filed documents along with a complaint viz., document No.3 and 4 to substantiate the allegations made in the complaint. So, Whether those allegations are true or otherwise are to be dealt only in the during the course of trial. Furthermore, what was

ordered under the impugned order is merely an exparte order of interim custody of the minor child and it is also specifically mentioned in the impugned order that it is only an interim order. In view of the pendency of this case, the report of the Protection Officer is also not seems to have been filed before the Court.

9. Considering that there are sufficient averments in the complaint filed before the trial Court by the first respondent and merit or otherwise of the said allegations are to be determined only by way of trial and hence, I do not find any reason to entertain this petitioner under Section 482 of CrPC.

10. In view of the finding, the preceding paragraphs that there is sufficient material available on record and allegations are found to be to indicate that there is a Domestic relationship between the petitioners herein and the first respondent at certain point of time as stated in the complaint and with regard to reliefs sought for under 18 of the Act, I do not find any merit in this Criminal Original Petition, the same is hereby rejected. Consequently, connected Miscellaneous Petition is closed.

11. In view of the fact that the case is pending from year 2010. The learned Judicial Magistrate No.VI, Coimbatore is hereby directed to expedite the trial and complete within four months from the date of receipt of a copy of this order by following the due process of law.

14.07.2017

nvi

To

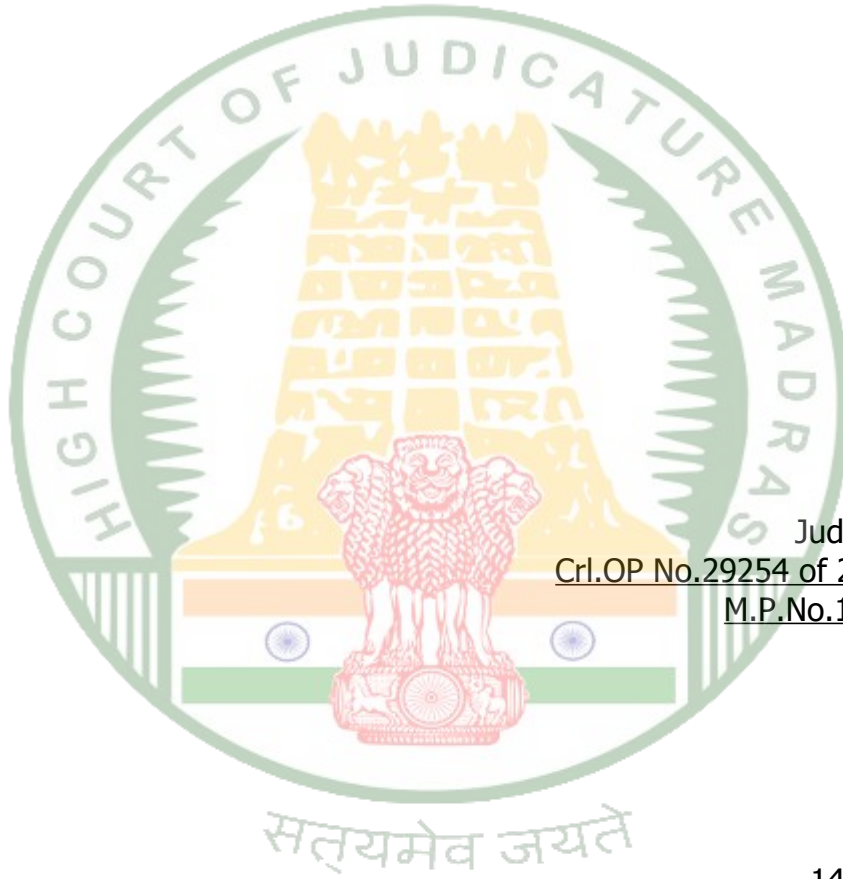
- 1.The Judicial Magistrate No.VI, Coimbatore
2. The Public Prosecutor,
High Court, Madras.



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RMT.TEEKAA RAMAN,J.,

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Judgment in
CrI.OP No.29254 of 2010 and
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