

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED .07.2017

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

RESERVED ON :19.07.2017

PRONOUNCED ON :28.07.2017

CrI.OP No.18365 of 2012
and
M.P.Nos.1 and 2 of 2012

1.Noore Alam
(not pressed)
2.Nacima Patitul
3.Munni@Sharimila
4.Shakila Banu
5.Amanullakan .. Petitioners

...Vs...

1.yasmin
2.The Protection Officer,
Under the Domestic Violation Act,
Erode District
(Amended as per the order of this Court
dated 03.08.2017) .. Respondents

Prayer:- Criminal Original Petition filed under Section 482
Cr.P.C., to call for the records relating to M.C.No.6 of 2012
on the file of District Munsif Cum Judicial Magistrate,
Perundurai.

For Petitioners :Mr.R.Ezhilarasan
For Mr.S.Dhanasekaran

For R1 :Mr.R.Kannan

For R2 :Mr.B.Ramesh Babu,
Govt.Advocate (CrI.side)

ORDER

This Criminal Original Petition has been filed under
Section 482 of Cr.P.C., to quash the complaint given under
Domestic Violence Act in M.C.No.6 of 2012. The accused 2 to 5
of the petitioners herein. The Criminal Original Petition has
been filed by the first accused initially subsequently it was
not pressed and Criminal Original Petition was dismissed
against the husband/1st accused.

2. The short facts of this case is that the marriage
between the 1st petitioner and 1st respondent was solemnized

on 21.04.1996, at Annapoorani Thirumana Mandapam, Pollachi by virtue of Islam Rites and Customs and the marriage also register before the Nikkah Register maintained by the Mosque, Pollachi, out of wedlock 2 sons was born. The respondent given a complaint to Police on 13.01.2010, a case was register in Crime No.5 of 2010, under Section 498A, 324, 323 of I.P.C and under Section 4 of Dowry Prohibition Act, the above case is now pending before District Munsif Cum Judicial Magistrate, Perundurai.

3. The 1st respondent filed another case for maintenance in M.C.NO.13 of 2012 before District Munsif Cum Judicial Magistrate, Perundurai on May 2010 for month Rs.18,000/- it was allowed on 27.06.2012 and a sum of Rs.12,000/- was awarded. In the meantime, the 1st respondent filed a petition before the 2nd respondent the Protection Officer on 25.04.2011, alleging that at the time of marriage 54 sovereign of gold jewels was given to the 1st respondent, apart from that a sum of Rs.50,000/- for many times and Rs.3,00,000/- and the 1st respondent sought to recover the same from the 1st petitioner, hence the complaint has given under the Domestic Violation Act.

4. Based on the complaint, the 2nd respondent in its Domestic Incident Report dated 24.02.2012 filed before District Munsif Cum Judicial Magistrate, Perundurai has stated that complaint for the alleged offence under Section 498A, 324, 232 of I.P.C and under Section 4 of Dowry Prohibition Act is now pending before District Munsif Cum Judicial Magistrate, Perundurai, hence this present complaint need not to take however without any reason the 2nd respondent has chosen to recommend on 30.04.2012 and also an application before the learned District Munsif Cum Judicial Magistrate, Perundurai, under Section 12 of the Protection of Women from Domestic Violation Act, 2005 is filed seeking various reliefs, without conducting any proper enquiry as contemplated under Act and the learned Judicial Magistrate also mechanically accepted the Domestic Incident report and taken the matter on file in M.C.No.6 of 2012.

5. The petitioners filed the above Crl.O.P. seeking to quash the proceedings, so far as the petitioners/accused 1,2 to 5 is concerned, in M.C.No.6 of 2012, on the file of District Munsif Cum Judicial Magistrate, Perundurai.

6. The learned counsel for the petitioner has submitted that there is no specific allegation leveled against any of the petitioners, especially there is no allegations against the petitioners 2 to 5 and does not warrant any action under the protection of Women from Domestic Violence Act, 2005 (hereinafter called as 'Act'). Hence, the complaint filed by the 1st respondent under the Domestic violence Act is not maintainable and it is purely to harass the petitioners

herein

7. The learned counsel for the petitioner submitted that the learned Judicial Magistrate failed to consider that before the Protection Officer the relief sought for by the 1st respondent/wife is only for returning of the gold jewels, and other seer, and cash given at the time of marriage, whereas the domestic incident report the 2nd respondent included various reliefs not sought by the 1st respondent, which is not permissible under law. The petitioners are not liable to be proceed under the Domestic Violence Act.

8. The learned counsel for the respondent has submitted that in the Criminal complaint under Section 498(a) of I.P.C. P.W.1 to P.W.7 are examined and matter is posted for examination of Investigation Officer.

9. On perusal of the typed set of papers, it is seen that originally, a complaint has been given by the first respondent/defacto-complainant alleging offence under Section 498(a), 324, 323 I.P.C read with Section 4 of the Dowry Prohibition Act which was taken as Crime No.5 of 2010 on the file of All Women Police Station, Erode. The Investigation Officer has filed a charge sheet after completion of investigation, wherein the husband was arrayed as A1 and mother was arrayed as second accused. While, the sister of the first accused are arrayed as A3 and A4, brother-in-law is arrayed as A5.

10. In the said case, according to the respondent counsel that trial has commenced and private prosecution witnesses have been examined and matter is posted for examination for police witnesses. It is also seen that the first respondent herein has filed maintenance case before the District Munsif Cum Judicial Magistrate, Perundurai, claiming maintenance under Section 125 of Cr.P.C for herself and her two minor son and daughter which according to the learned counsel for the petitioner has already been ordered and they are remitting a sum of Rs.12,500/- per mensem. Thereafter, it seems, she gave a complaint under the Protection of Women from Domestic Violence Act and the Protection Officer gave a report on 21.04.2011.

11. After going through the copy of the Domestic Incident Report and also a letter given by the Protection Officer on 24.02.2012, wherein, the Protection Officer for the Erode District have stated that till the disposal of the Crime No.5 of 2010 under the Protection of Women from Domestic Violence Act need not be taken up for further proceedings. However, in the very same report, she has recommended for residential order and order for monetary compensation under Section 19 and the Section 22 of the Act.

12. Based upon the report, the District Munsif Judicial Magistrate, Perundurai has taken the matter as

M.C.No.6 of 2012 and issued notice to the respondent on 16.04.2012. After going through the above report, this Court is of the considered view that there is sufficient material for the Magistrate to take the matter for cognizance and issuance of notice to the respondent namely the present petitioner herein. Therefore, on the factual background of this case as narrated above and after going through the complaints as well as the report of the Protection Officer, this Court is unable to affix a seal of approval for the conditions by the learned counsel for the petitioner.

13. Considering this scope of the enquiry that can be gone into by this Court under Section 482 of Cr.P.C, this Court is adopting self-imposed restriction upon himself except to say that there are sufficient material available on record for the trial Court to proceed with the maintenance case filed by the learned counsel for the respondent herein accused/ the petitioner 2 to 5 herein.

14. In this view of the matter, this Criminal Original Petition is dismissed. The District Munsif Cum Judicial Magistrate, Perundurai is directed to dispose the M.C.6 of 2012 within a period of four months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

सत्यमेव जयते

To

1.The District Munsif Cum Judicial Magistrate, Perundurai.

2.The Protection Officer,
Under the Domestic Violation Act,
Erode District

3. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.R.Kannan,Advocate sr.54109

Crl.OP No.18365 of 2012 and
M.P.Nos.1 and 2 of 2012

ppa (co)

SS(17/8/2017)

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