

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 02.11.2017
PRONOUNCED ON : 14.11.2017

CORAM :
THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Criminal Original Petition No.9875 of 2016
and Crl.M.P.No.5206 of 2016

1.Mohamed Hussain
2.Zareen Hussain
3.Fakrudeen Ahamed
4.Syed Ibrahim
5.Bousiya
6.Salima

.... Petitioners

Vs.

1.Tharvej Bhanu
2.Minor Humid Kalim

... Respondents

Prayer:- Petition filed under Section 482 Cr.P.C., to call for the records pertaining to M.C.No.65 of 2014 pending on the file of XXIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioners : Mr.R.Narendran
For Respondents : Mrs.Uma Vidyapathi

O R D E R

This petition has been filed to call for the records pertaining to M.C.No.65 of 2014 pending on the file of XXIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

2. For the sake of convenience, the parties will be referred to by their name.

3. There is suppression in the petition in Crl.O.P.No.9875 of 2016 that has been filed by Mohamed Hussain and five others, on which ground itself, this petition deserves to be dismissed with exemplary costs.

4. Tharvej Bhanu got married to Aboobakar Kalim [for short "Kalim"] on 04.01.2006 and through the wedlock, the couple have a child Humid (minor). It appears that their marriage ran into rough weather resulting in the spouses getting estranged. Tharvej Bhanu initiated proceedings under the Protection of Women from Domestic Violence Act in M.C.No.65 of 2014 before the XXIII Metropolitan Magistrate, Saidapet, against Kalim/husband, Mohamed Hussain (father-in-law), Zareena Hussain (mother-in-law), Fakrudeen Ahmed (brother-in-law), Syed Ibrahim (brother-in-law), Bousiya, wife

of Fakrudeen Ahmed (co-sister) and Salima, wife of Syed Ibrahim (co-sister) for various reliefs. Challenging the proceedings, except Kalim, the others have filed the present petition, Crl.O.P.No.9875 of 2016, for quashing the same on various grounds, the principal ground being, there was no domestic relationship between Tharvej Bhanu and her in-laws [the petitioners in Crl.O.P.No.9875 of 2016].

5. The petitioners had also filed Crl.M.P.No.5206 of 2016 in Crl.O.P.No.9875 of 2016 for stay of the proceedings before the trial Court. When the quash petition came up for admission before this Court on 21.06.2016, this Court felt that Tharvej Bhanu and Humid (minor) required to be paid a reasonable amount per month as maintenance and therefore, this Court passed the following order:

"Notice of motion returnable by 19.07.2016. Private notice is also permitted.

2. The presence of the petitioners before the trial Court is dispensed with on condition that the petitioners shall ensure that Aboobacker Kaalim, who is the husband of the first respondent and father of the second respondent, deposits a sum of Rs.5,000/- before 5th day of every English calendar month to the credit of M.C.No.64 of 2014 on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, as ad-interim maintenance, without prejudice to both the parties. On such deposit the first respondent - wife is entitled to withdraw the same.

3. For the month of June 2016, the said sum of Rs.5,000/- shall be deposited on or before 29.06.2016, failing which, the trial Court can insist upon the presence of the petitioners. The pendency of this case shall not be a bar for the trial Court to proceed with the case as against the said Aboobacker Kaalim.

Post on 19.07.2016."

6. Tharvej Bhanu entered appearance in Crl.O.P.No.9875 of 2016 and her counsel brought to the notice of this Court that the interim order dated 21.06.2016 has not been complied with till date.

7. Mr.R.Narendran, learned counsel for the petitioners/in-laws submitted that the interim order was directed only as against Kalim, who is not a petitioner and that he had sent a notice to Kalim, which had returned unserved.

8. During the course of these submissions, the following facts came to the notice of this Court. As stated earlier,

Tharvej Bhanu filed M.C.No.65 of 2014 against her husband Kalim and in-laws before the XXIII Metropolitan Magistrate, Saidapet and in Crl.M.P.No.2828 of 2014, she had prayed for certain interim orders under the Protection of Women from Domestic Violence Act.

9. Notice was served on Kalim and the respondents in M.C.No.65 of 2014 and they had entered appearance before the XXIII Metropolitan Magistrate, Saidapet and had contested the interim application, Crl.M.P.No.2828 of 2014, tooth and nail. After hearing both sides, the learned XXIII Metropolitan Magistrate had passed orders in Crl.M.P.No.2828 of 2014 in M.C.No.65 of 2014 on 31.12.2014 directing that Tharvej Bhanu and her minor son should be permitted to reside in Flat No.Y-1, "Y" Block, Parkwood Antony Enclave, 1/24 adjacent Senthurpuram, Seetharamapuram, Aadidtion Nagar, Kattupakkam; pay Rs.45,000/- per month to Tharvej Bhanu towards interim maintenance and medical expenses; pay Rs.10,000/- per month to Humid (minor) and pay arrears amount of Rs.55,000/- for each month. Aggrieved by the order passed by the learned XXIII Metropolitan Magistrate, Kalim and all the petitioners/in-laws in Crl.O.P.No.9875 of 2016 have filed an appeal being Crl.A.No.7 of 2015 in the Sessions Court and the same was heard by the XVIII Additional Sessions Court, Chennai and orders were passed on 20.07.2015.

10. The learned XVIII Additional Sessions Judge, by order dated 20.07.2015 in Crl.A.No.7 of 2015, modified the order passed by the learned XXIII Metropolitan Magistrate in respect of the quantum of maintenance alone and remanded the matter back to the Magistrate for taking evidence for the purpose of fixing the quantum of maintenance. The other reliefs that were granted by the learned Magistrate were confirmed by the Sessions Court.

11. On a reading of the proceedings, it is seen that Kalim had pronounced triple talaq on 02.08.2012 and had communicated the same to Tharvej Bhanu. Challenging the triple talaq, Tharvej Bhanu has filed a suit for declaring the triple talaq as invalid and for restitution of conjugal rights, which suit is pending on the file of the Family Court. It is also alleged that after pronouncing triple talaq, Kalim has remarried.

12. Challenging the order passed by the XVIII Additional Sessions Judge in Crl.A.No.7 of 2015, Kalim and the petitioners in Crl.O.P.No.9875 of 2016 (the in-laws) filed M.P.No.1 of 2015 in Crl.R.C.837 of 2015 before this Court, in which, this Court has passed the following order on 27.08.2015:

"2. Having regard to the above fact, there will be an interim stay of operation of the order passed by the Appellate Court on 20.07.2015 in Criminal Appeal No.7 of 2015

subject to condition the petitioners pay a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) directly to the first respondent/wife by means of a demand draft and continue to deposit the sum of Rs.20,000/- (Rupees Twenty Thousand Only) per month to the credit of M.C.No.65 of 2014 on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai on or before 5th of every succeeding calendar month until further orders. In the event of failure to comply with the conditions mentioned above, the interim stay shall stand vacated automatically without any further reference to this Court."

13. Tharvej Bhanu entered appearance in CrI.R.C.No.837 of 2015 and submitted to this Court that the order dated 27.08.2015 has not been complied with. This Court has passed further orders in CrI.R.C.No.837 of 2015 on 25.04.2016, which is as follows:

"3. Inasmuch as the petitioners have not complied with the interim order, dated 27.08.2015 in M.P.No.1 of 2015 in CrI.R.C.No.837 of 2015, as stated supra and also that a sum of Rs.20,000/- p.m., to the credit of M.C.No.65 of 2014, on the file of the trial Court was also not continued to be paid, this Court grants liberty to the First Respondent/Wife to proceed against the concerned persons before the trial Court, in the manner known to law and in accordance with law.

4. Registry is directed to list the matter on 06.06.2016."

14. All these previous litigations have been completely suppressed in the present petition, CrI.O.P.No.9875 of 2016 that has been filed by Mohamed Hussain and five others (in-laws). When this was brought to the notice of Mr.Narendran, learned counsel, he submitted that, it is not necessary to disclose those facts as the relief claimed in the quash petition was different from the relief that has been claimed in the revision proceedings.

15. This Court is unable to accept his submission for the simple reason that the petitioners have been contesting before the Magistrate, before the Sessions Court and before this Court in CrI.R.C.No.837 of 2015 that there is no cause of action under the Protection of Women from Domestic Violence Act. That apart, the remedy under Section 482 Cr.P.C. is an extraordinary remedy and the powers under Section 482 Cr.P.C. can be invoked only to protect an honest litigant from a dishonest prosecution. It is not a platform for forum shopping.

In such view of the matter, the petitioners herein deserve no indulgence and this petition stands dismissed with exemplary costs of Rs.50,000/- payable by the petitioners to Tharvej Bhanu and her minor son Humid. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gms

To

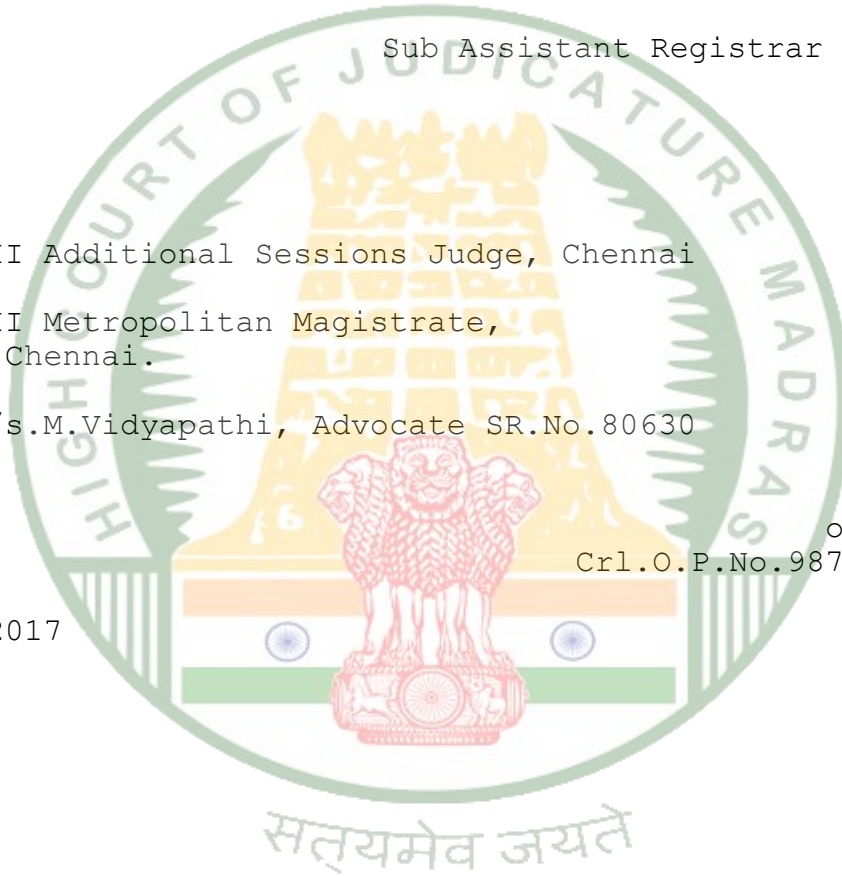
1.The XVIII Additional Sessions Judge, Chennai

2.The XXIII Metropolitan Magistrate,
Saidapet, Chennai.

+1cc to M/s.M.Vidyapathi, Advocate SR.No.80630

NRI (CO)
sm:30.11.2017

order in
Cr1.O.P.No.9875 of 2016



WEB COPY