



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.O.P. (MD) No.14759 of 2017

and

CrI.M.P. (MD) Nos.9825 and 9826 of 2017

1.N.Sudhakar
2.Narayanasamy
3.N.Suseela

: Petitioners / Respondents

-Vs-

1.R.Sumitha
2.Baby S.Sagarika
Aged about 3 years and 10 months
rep. by her mother and natural
Guardian R.Sumitha

: Respondents / Petitioners

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records pertaining to the case in D.V.C.No.14 of 2017 on the file of the learned Judicial Magistrate Court No.II, Virudhunagar District and quash the same.

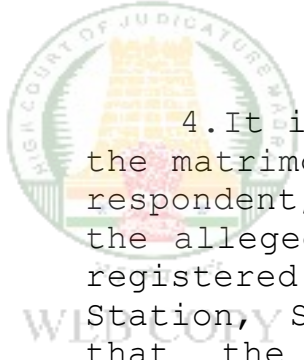
For Petitioners : Mr.D.Sasikumar

ORDER

This petition is filed to quash the proceedings in D.V.C. No.14 of 2017 on the file of the learned Judicial Magistrate Court No.II, Virudhunagar.

2.The respondents 1 and 2 has filed D.V.C.No.14 of 2017 under Section 12 of Protection of Women from Domestic Violence Act for the relief provided under Sections 12, 17,18, 19, 20 and 22 of the Act. The first petitioner in this petition is the husband of the first respondent and the father of second respondent. The second petitioner is the father-in-law of the first respondent and the third petitioner is the mother-in-law of the first respondent.

3.The marriage between the first petitioner and the first respondent was solemnized on 16.05.2012 and this fact is not in dispute. It is stated by the petitioners that due to difference of opinion between the couple, the first respondent deserted the first petitioner and started residing with her parents. The second respondent was born on 24.10.2013 when the first respondent was residing with her parents.



4. It is stated by the petitioners that in stead of sorting out the matrimonial dispute between the first petitioner and the first respondent, the first respondent lodged a criminal complaint for the alleged offences under Sections 498A and 406 I.P.C. which was registered in Crime No.41 of 2015 on the file of All Women Police Station, Samayanallur, Madurai District. It is further stated that the petitioners 2 and 3 in this petition obtained anticipatory bail in Crl.O.P.(MD) No.4929 of 2015 by depositing a sum of Rs.5,00,000/- in the account of first respondent and by returning the Sridhana properties including the gold jewels. It is further stated that the first petitioner has filed a petition for divorce before the Sub Court, Aruppukottai and it is pending in H.M.O.P.No.124 of 2015. The petition filed by the first respondent to transfer the proceedings is pending in Tr.C.M.P.(MD) No.96 of 2016 before this Court. Crl.O.P.(MD) No.12467 of 2015 has been filed by the petitioners 2 and 3 for quashing the criminal complaint. Similarly, the petition filed by the first respondent for maintenance is pending in M.C.No.8 of 2016 before the Judicial Magistrate Court, Vadipatti. During the pendency of all the proceedings above referred to, it is stated by the petitioners that the respondents have filed D.V.C.No.14 of 2017 under Section 12 of the Protection of Women from Domestic Violence Act. It is submitted by the learned counsel for the petitioners that the proceedings in D.V.C.No.14 of 2017 is nothing but clear abuse of process of law and that if the petition is proceeded, it will result in miscarriage of justice. It is further submitted that the petition filed by the respondent is not in accordance with law and that there is no *prima facie* case to show that the respondents were subjected to domestic violence. Describing the petition in D.V.C.No.14 of 2017 as a vexatious litigation, it is contended by the learned counsel for the petitioners that the petition itself is not in the prescribed format and that the petitioner has not filed Form-I namely domestic incident report. Since the first respondent deserted the first petitioner even in the year 2013, the petition filed after four years from the date of separation alleging harassment or domestic violence is unsustainable and the petition in D.V.C.No.14 of 2017 is liable to be quashed.

5. The learned counsel for the petitioner further submitted that all the jewels and Sridhana properties were returned to the first respondent in the presence of the Police Inspector concerned and it was only based on the instructions given by the Inspector of Police regarding the return of jewels and Sridhana properties, the petitioners 2 and 3 were given anticipatory bail. The learned counsel for the petitioners also produced before this Court the list of articles which were handed over to the first respondent. It is also submitted by the learned counsel for the petitioners that the first petitioner who was subjected to torture and mental agony and that the first respondent has filed the petition only to harass the petitioners further. It is also submitted that



the petition is liable to be quashed on the limitation point by relying upon Section 468 of Criminal Procedure Code.

6. The learned counsel appearing for the petitioners produced a copy of the order that was passed in CrI.O.P.(MD)No.4929 of 2015 wherein this Court was pleased to grant interim anticipatory bail on condition that the petitioners depositing a sum of Rs.5,00,000/-.

7. In the petition filed by the respondents in D.V.C.No.14 of 2017 under Section 12 of the Protection of Women from Domestic Violence Act, the reliefs prayed for by the respondents are for maintenance of respondents, for providing shelter to the respondents at Door No.586, Raj Nagar, Kariyapatti, Virudhunagar District and for restraining the petitioners herein from using or diluting the part of Sridhana or gold jewels that were under the custody of the petitioners herein and for return of the jewels and Sridhana articles given by the parents of the first respondent at the time of marriage. The averments found in the petition clearly discloses the cause of action for filing this petition. The petitioner has not claimed any compensation for any domestic violence. In stead, the claim of the respondents is for maintenance, for providing shelter to the respondents and for returning jewels and Sridhana articles. Having regard to the specific relief that were provided under the provisions of Protection of Women from Domestic Violence Act, this Court does not find any merits in the submission of the learned counsel for the petitioners. The fact that the first petitioner and the first respondent were living together till the second respondent was born to the first petitioner and the first respondent is not in dispute. The marriage between the first petitioner and the first respondent is still subsisting and the domestic relationship continues. In this background, the grounds raised by the petitioner and the arguments advanced by the learned counsel for the petitioners do not inspire this Court to grant any relief to the petitioners. As a result, this Criminal Original Petition is dismissed.

8. It is to be noted that specific allegations are made in the petition as against the petitioners complaining domestic violence. It is specifically stated that the harassment to the wife was at the instigation of the respondents 2 and 3 and that therefore, this Court is not able to accept the submission of the learned counsel for the petitioners that the proceedings in D.V.C.No.14 of 2017 can be dismissed as against the petitioners 2 and 3 herein. It is open to the petitioners 2 and 3 to raise all their objections as the petition is also for claiming a sum of Rs.20,00,000/- from the petitioners. However, no specific domestic violence is alleged as against the petitioners 2 and 3 in this case. Hence, appearance of the petitioners 2 and 3 is dispensed with unless and until their



presence is specifically required by an order of the Court. Consequently, the connected criminal miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

/True copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate Court No.II,
Virudhunagar District.

2.Do Thro The Chief Judicial Magistrate, Virudhunagar.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.D.SASIKUMAR,Advocate,SR. 85480

CRL.O.P.(MD)No.14759 of 2017
02.11.2017

SRM

KK/MR KKR/SAR 3/21.12.2017/ 4P- 5C/