



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.04.2017

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

**Crl.O.P. (MD) No.13809 of 2016 and
Crl.M.P. (MD) Nos.6440 & 6441 of 2016**

1. Pitchaimuthu
2. Muthiah
3. Eshwari
4. Marikannan
5. Muthukumar

... Petitioners/R1 to R5

-vs-

1. Praveena
2. Minor Kowshika
(2nd respondent herein rep by her natural
guardian and mother the 1st respondent)

... Respondents/Petitioners

Prayer : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records in D.V.M.C.No.2 of 2016 on the file of the learned Judicial Magistrate, Aundipatti and quash the same against the petitioners.

For Petitioners : Mr.K.Gokul

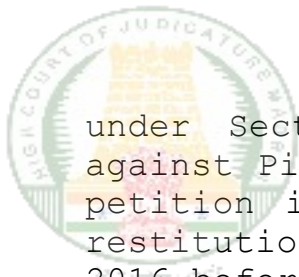
For Respondents : Mr.P.Muthu Vijaya Pandian

O R D E R

This petition has been filed, seeking to call for the records in D.V.M.C.No.2 of 2016 on the file of the learned Judicial Magistrate, Aundipatti and quash the same against the petitioners.

2.Praveena got married to Pitchaimuthu on 14.11.2013 and they have one child by name Kowshika through the wedlock. It is stated that Praveena became pregnant in three months and the conception ended in abortion. She conceived for the 2nd time and she was left at her native place in her parental home by Pitchaimuthu. Kowshika was born on 17.12.2014.

3. Admittedly, the relationship between the spouses soured for various reasons. On the complaint lodged by Praveena, the Police registered a case in Crime No.15 of 2015 on 09.10.2015



under Section 498(A) and 506 IPC and Section 4 of TNPHW Act against Pitchaimuthu and his family members. Praveena also filed a petition in HMOP No.211 of 2011 before the Sub-Court, Theni for restitution of conjugal rights. Pitchaimuthu filed HMOP No.77 of 2016 before the same Court for divorce.

WEB COPY

4. While so, Praveena had initiated proceedings in D.V.M.C.No.2 of 2016 before the learned Judicial Magistrate, Aundipatti under the Domestic Violence Act against Pitchaimuthu and his family members, challenging which, Pitchaimuthu and others are before this Court.

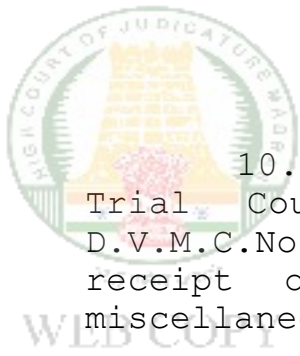
5. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

6. Learned counsel for the petitioners submitted that there are contradictions in the version of Praveena in the petition under D.V.Act, the Police complaint and in the matrimonial proceedings. Learned counsel for the petitioners drew the attention of this Court to various documents annexed in the typeset of papers in support of this contention.

7. Learned counsel for the respondents refuted the above submissions.

8. The proceedings that are impugned are not criminal proceedings *stricto sensu* for this Court to interfere and the impugned proceedings are matrimonial proceedings, where estranged wife and child are before the Trial Court, seeking certain reliefs under the D.V.Act. It is true that all the family members of Pitchaimuthu have been arrayed as respondents in the D.V. petition. Since there are prima facie materials for the full-fledged trial, this is not a fit case to quash the entire proceedings. However, this Court is of the view that Marikannan / 4th petitioner and Muthukumar / 5th petitioner, who are the brothers of Pitchaimuthu are not at all necessary parties in the said proceedings. Muthukumar is only 20 years old and at time of marriage between Pitchaimuthu and Praveena, he was a minor.

9. Thus, in the considered opinion of this Court, the proceedings against Marikannan/P4 and Muthukumar/P5 are an abuse of process of law and accordingly, the proceedings in D.V.M.C.No.2 of 2016 as against Marikannan/P4 and Muthukumar/P5 are hereby quashed. However, the proceedings shall go on as against Pitchaimuthu, Muthiah and Eshwari. The presence of Muthiah and Eshwari in D.V.M.C.No.2 of 2016 before the learned Judicial Magistrate, Aundipatti is hereby dispensed with on condition that they give an undertaking that their counsel will represent them and also serve as witnesses in their absence without adopting any dilatory tactics. They shall be present before the Trial Court at the time of delivering final orders.



10. In the result, this petition is partly allowed and the Trial Court is directed to complete the proceedings in D.V.M.C.No.2 of 2016 within a period six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AD-II)

/True copy/

Sub Assistant Registrar

To:

The Judicial Magistrate,
Aundipatti.

+1 cc to Mr.K.Gokul , Advocate in SR.No. 50338

+1 cc to Mr.P.Muthu Vijaya Pandian , Advocate in SR.No. 19276

ar

AE/SV MMS/SAR3/27.04.2017/3P/4C

Cr1.O.P. (MD)No.13809 of 2016
03.04.2017