

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.10.2018

CORAM
THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.10182 of 2013
and
M.P.Nos.1 & 2 of 2013

1.R.Balamurugan
2.R.Thenmozhi
3.R.Poornima
4.R.Palanikumar

... Petitioners /Respondents

Vs.

1.Uma Mandhagini

2.The Protection Officer,
District Social Welfare Office,
No.43/2, Second Street,
Vandavasi Road,
Kancheepuram.

.... Respondents/Petitioners

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the D.V.No.6 of 2013 on the file of the Judicial Magistrate at Tambaram and quash the same.

For Petitioners : Mr.M.S.Sathyaraj
for Mr.V.Manohar

For R1 : No Appearance

For R2 : Mr.T.Shunmugarajeswaran
Government Advocate (Crl.Side)

O R D E R

This petition has been filed by the petitioners Nos.1 to 4 in D.V.No.6 of 2013 on the file of the Judicial Magistrate at Tambaram to quash the proceedings against them in the above D.V.No.6 of 2013.

2. The learned counsel for the petitioners has submitted that the second respondent has admitted in her petition that for the past four years she is residing at Tiruporur with her paternal uncle, Munuswamy. He further submitted that the petitioner Nos.2 to 4 herein are residing somewhere else and they are not residing with the second respondent in a shared house hold and therefore, the provisions of the Protection of Women from Domestic Violence Act, 2005, would not attract. He

further submitted that already the petitioner has filed a divorce petition and the same was allowed and subsequently, the second respondent has filed a petition to set aside the order which was passed in divorce petition and the same was dismissed for default and subsequently, she filed another petition to restore the said Interlocutory Application and therefore, the petition under the Protection of Women from Domestic Violence Act, 2005, is not maintainable against the first petitioner herein also.

3. Though the first respondent initially appeared through counsel, subsequently, her counsel has reported 'no instructions' and hence, the matter has been posted by printing the name of the first respondent in the cause-list. But, she has not appeared either in person or through counsel.

4. The learned Government Advocate, who is appearing for the second respondent has submitted that the second respondent has not only asked for residential order, she also asked for return of sreedhana, marriage expenses, dowry amount and also seeking compensation and legal expenses, maintenance etc., and therefore, even if divorce is granted against the first petitioner that would not be a bar for maintaining the petition under the Protection of Women from Domestic Violence Act, 2005, against the first petitioner and therefore, he opposed this petition.

5. It is seen from the typed set of papers filed by the petitioners that in the petition, which was filed by the first respondent before the Magistrate Court, she has stated that she is residing at Tiruporur in her paternal uncle's house for the past four years. Further she has given address as petitioner Nos.2 and 4 herein are residing at Madurai. As far as Petitioner No.3 is concerned, she is residing at Villivakkam, Chennai. So, it is clear that the first respondent herein and the petitioner Nos.2 to 4 herein are not residing in a shared household. Therefore, the provisions of Protection of Women from Domestic Violence Act, 2005 would not attract against the petitioners 2 to 4 herein.

6. In so far as the first petitioner is concerned, admittedly, the proceedings with regard to the divorce is still pending. Further in the petition filed under the protection of Women from Domestic Violence Act, 2005, the first respondent has asked for return of Sreedhana and also monetary reliefs. Under the said circumstances, this Court is of the view that a prima facie case is made out against the first petitioner and therefore, this petition has to be dismissed against the first petitioner.

7. In the result, this Criminal Original Petition is allowed in respect of the petitioner Nos.2 to 4. So, the proceedings in D.V.No.6 of 2013 on the file of the Judicial Magistrate at Tambaram are quashed against the petitioner Nos.2 to 4 are concerned. In so far as the first petitioner is concerned, this Criminal Original Petition is dismissed. The trial Court is directed to proceed against the first petitioner and disposed of the above D.V.No.6 of 2013 at early. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vsa

To

- 1.The Judicial Magistrate,
Tambaram.
- 2.The Protection Officer,
District Social Welfare Office,
No.43/2, Second Street,
Vandavasi Road,
Kancheepuram.
- 3.The Public Prosecutor,
Madras High Court,
Chennai.
- 4.The Section Officer,
Criminal Section,
High Court, Chennai - 104.

+lcc to Mr.S.Sathyaraj, Advocate, S.R.No.68664

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VGII(CO)

rrs 22/11/2018