

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.07.2018
Pronounced on : 24.09.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.13268 of 2011

and

M.P.Nos.1 & 2 of 2011

M.Anjaneyan,
S/o.Late Murugan.

... Petitioner

Vs.

1.Mrs.Pushpa Rajamani,
W/o.Anchaneyan (a) M.A.Neyan.

2.Mrs.Philomina Arul Rani,
W/o.N.Prabudas.

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the C.M.P.No.2714 of 2008 pending on the file of the Judicial Magistrate Court No.I, Thiruvallur and quash the same.

For Petitioner : Mr.R.Narendran

For Respondents : Mr.R.Karunakaran

* * * * *

ORDER

This Criminal Original Petition has been filed by the petitioner, who is the respondent in a case of Domestic Violence Act, 2005. The Domestic Violence Act has been filed by the respondents before the Learned Judicial Magistrate No.I, Thiruvallur initially numbered as Crl.M.P.No.2714 of 2008, later assigned as C.C.No.215 of 2008.

2.The respondents filed a private complaint under the Domestic Violence Act, 2005 alleging that the petitioner has committed an offence under Section 3(a) (iv) (a) (b) of the Protection of Women from Domestic Violence Act, 2005 and seeking further relief under Section 20 of the said Act.

3.The contention of the petitioner is that the petitioner, a Teacher (Tamil Pandit) worked in Tiruttani Government Girls Higher Secondary School, Thiruvallur District, had served without any blemish for the past 36 years and had retired on 30.06.2008. He had married one Ananthammal, on 14.07.1971 and got two sons and two daughters, grown up. The first respondent had earlier filed a maintenance case against the petitioner, which was dismissed with regard to this respondent and directed the respondents to prove that this respondent is the legally wedded wife of the petitioner. Further, there are Civil suits pending between the petitioner and the respondents in the Family Court seeking declaration that the respondent is the legally wedded wife of the petitioner and to restrain School authorities in disbursing the retirement benefits to the petitioner.

4.The learned counsel for the petitioner contended that there is no domestic relationship between the petitioner and the respondents and further, there is no specific averments in the complaint to show that the petitioner and the first respondent had lived together, had living in relationship. Further, it is the admitted case of the respondents that the petitioner was already married with one Ananthammal and had four children and the petitioner was living with them as a family. Hence, the respondents are not entitled to invoke the provisions of Domestic Violence Act, 2005 and the first respondent is not coming under any provisions of the act and sought quashing of the complaint.

5.It is seen that the respondents had not approached the Protection Officer and had filed the private complaint directly before the Judicial Magistrate No.I, Thiruvallur.

6.The learned counsel for the petitioner relied upon the Judgments of the Hon'ble Apex Court in the case of Indra Sarma Vs V.K.V.Sarma in C.A.No.2009 of 2013 reported in 2013 15 SCC 755 and D.Velusamy Vs. D.Patchaimmal in Crl.A.Nos.2028-2029 of 2010 reported in 2010 10 SCC 469.

7.The contention of the respondents is that the petitioner had married the first respondent on 09.12.1981 and it was an arranged marriage conducted by the friends and relatives. Thereafter, on 12.12.1986, the first respondent was forced to leave the matrimonial home along with her son and daughter, as the petitioner was ill-treating her. Thereafter, the petitioner had never cared or paid any money for the family expenses. The daughter of the first respondent is being paid maintenance by the

petitioner on the directions of this Hon'ble Court in Crl.R.C.No.1432 of 2004 and for the marriage and education of the respondent's daughter, the first respondent had sought a monetary relief from the retirement benefits of the petitioner.

8.Considering the rival submissions and on perusal of the records, this Court finds that the first respondent knowing well that the petitioner is already married to one Ananthammal as early as on 14.07.1971 and had four children and living as separate family. Having known this fact, the first respondent could not have entered into a live-in relationship in the nature of marriage. The claim of the respondents' relationship with the petitioner is not a relationship in the nature of the marriage, since, it has no inherent and essential characteristic of the marriage. Hence, the relationship would not fall within the definition of the domestic relationship under Section 2(f) of the Domestic Violence Act, 2005.

9.The Apex Court had categorically held that such relationship considered are in the nature of the marriage, then grave injustice would be caused to the legally wedded wife and their children, who opposed on such relationship. Consequently, any act, omission or commission or conduct of the respondents in connection with such type of relationship would not amount to Domestic Violence under Section of 3 of the Domestic Violence Act.

10.Consequently, all further proceedings before the Learned Judicial Magistrate No.I, Thiruvallur is quashed.

11.Accordingly, this Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petition are closed.
vv2/ah

Sd/--

Assistant Registrar(CS ix)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.I,
Thiruvallur, Chennai.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Narendran , Advocate SR.No. 66433

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ASK(31/10/2018)