

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2018

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.15458 of 2013

and

MP.Nos.1 and 2 of 2013

1.P.Kumar
2.M.Periyasamy
3.Palanisamy
4.Savithiri
5.Palanisamy

... Petitioners/Accused 1 to 5

Vs.

S.Malarselvi

...Respondent/Complainant

PRAYER: This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the complaint in M.C.No.2 of 2013 on the file of the Judicial Magistrate No.II, Erode quash the same.

For Petitioners : Mr.N.Manokaran

For Respondent : No Appearance

O R D E R

This petition has been filed by the respondents 1 to 5, in MC.No.2 of 2013, on the file of the Judicial Magistrate-II, Erode, seeking to quash the proceedings pending against them in the above said MC.

2.The respondent herein has submitted a letter dated 06.01.2010, before the Protection Officer, Erode District. After receipt of the said letter, the Protection Officer, Erode District has conducted an enquiry and submitted a Domestic Incident Report dated 19.04.2010 recommending certain reliefs

under the Protection of Women from Domestic Violence Act 2005 (herein after referred to as "the Act"). Based on the said report, the Judicial Magistrate-II, Erode, has taken the cognizance of the case vide MC.No.2 of 2013 and issued notice to the petitioners herein. After receipt of such notice, the petitioners herein have filed the present petition under Section 482 Cr.P.C., seeking to quash the proceedings pending against them in MC.No.2 of 2013, on the file of the learned Judicial Magistrate-II, Erode.

3.The learned counsel appearing for the petitioners has submitted that the first petitioner is the Husband; of the respondent herein, the second petitioner is the father of the first petitioner; the third petitioner is the brother of the second petitioner; fourth petitioner is the sister of the first petitioner and the fifth petitioner is the husband of the fourth petitioner. He further submitted that the marriage between the first petitioner and the respondent herein was solemnised on 01.10.2006, and it was registered before the Sub-Registrar, Sivagiri on 11.10.2006, and out of wedlock, one female child by name Rithanya, was born to them. He further submitted that, since the marriage between the first petitioner and the respondent is a love marriage, other, they lived separately without the knowledge of other petitioners. He further submitted that since a misunderstanding arose between the first petitioner and the respondent, a compromise was arrived at between them and in the said compromise it was agreed that a sum of Rs.4,50,000/- to be paid by the first petitioner towards maintenance to the respondent and her child and also agreed to file a petition for divorce by consent. He further submitted that in pursuance of the said compromise, a petition for consent divorce was filed before the Sub-Court, Erode. However, subsequently, since the respondent has not appeared, the said petition was dismissed. He further submitted that after dismissal of the said consent divorce petition, the first petitioner has filed a petition seeking divorce in HMOP.No.174 of 2008 on the file of the Principle Sub-Judge, Erode and the said petition was allowed and it was also ordered by the learned Principle Sub-Judge that the first petitioner to pay the amount to the respondent as agreed by him. He further submitted that as against the said order, the respondent herein has filed an appeal before the District Court, Erode, and the same was allowed and as against the same the first petitioner has filed a Civil Revision Petition before this Court and the same is still pending. He further submitted that even in the letter submitted before the Protection Officer, the respondent has categorically admitted that after the marriage the first petitioner and herself have separately lived at Rajiv Nagar, Anaikattu Road, Surampatti Valasu, Erode, in a rented house and therefore the provisions of the Act would not attract against the petitioners

2 to 5. He further submitted that after granting divorce by the Sub Court, as an after thought, the respondent herein has submitted a letter to the Protection Officer to take action under the Act only to harass the petitioners herein. She, further submitted that since the respondent herself has agreed before the Panchayat that she will receive a sum of Rs.4,50,000/-, towards maintenance for herself and her child, she is not entitled to seek any relief under the Domestic Violence Act and therefore he prayed to quash the proceedings against the petitioners herein in the above M.C.

4. Though notice was served on the respondent, she has not appeared either in person or through counsel. Hence, after hearing the arguments of the learned counsel for the petitioners and perusing the records, orders being passed in this petition.

5. It is seen from the typed set of papers filed by the petitioners herein that the respondent belongs to Schedule Caste, whereas the petitioners belong to Kongu-Vellalar community. The first petitioner and the respondent loved together and got married on 01.10.2006 and subsequently, they have registered the same in the office of the Sub- Registrar at Sivagiri on 11.10.2006. Out of wedlock, one female child by name Rithanya, was born on 21.01.2007. In the letter submitted by the respondent dated 17.04.2010 to the Protection Officer, in para-2, she has stated that after marriage the first petitioner and herself have lived together in a rented house at Rajiv Nagar, Anaikattu Road, Surampatti Valasu, Erode. But she has not stated in the said letter that the other petitioners also lived with her.

6. For the purpose of disposal of this petition, it is relevant to extract certain definitions mentioned in the Domestic Violence Act, which read as under.

"(a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

(p) "residence order" means an order granted

in terms of sub-section (1) section 19;

(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household."

7. A combined reading of the aforesaid definitions would show that for maintaining petition under the Act, condition precedent is that the 'aggrieved person' should have lived in a domestic relationship under one roof or in a shared household with the respondent.

8. In this case as already pointed out that in the letter submitted by the respondent before Protection Officer, she has not stated she lived with the petitioners 2 to 5 in a shared household. On the contrary, she has categorically stated that after marriage the first petitioner and herself have lived in a rented house at Rajiv Nagar, Anaikattu Road, Surampatti Valasu, Erode. Therefore the provisions of the Domestic Violence Act would not attract against the petitioner 2 to 5 and therefore the proceedings against them are liable to be quashed.

9. Insofar as the first petitioner is concerned, admittedly the petition filed by the first petitioner seeking divorce in HMOP.No.174 of 2008 was allowed by the Sub-Court, Erode, against which, the respondent herein has filed an appeal before the District Court and the same was allowed and as against the said order the first petitioner has filed Civil Revision Petition and the same is pending before this Court. Under the said circumstances, this Court is of the view that a prima facie case is made out against the first petitioner to proceed under the Domestic Violence Act. Therefore, the petition is liable to be dismissed against the first petitioner.

10. In the result this petition is partly allowed. The proceedings pending in MC.No.2 of 2013, on the file of the Judicial Magistrate-II, Erode are hereby quashed insofar as the petitioners 2 to 5 are concerned only. Insofar as the first petitioner is concerned, this petition is dismissed. The

Judicial Magistrate-II, Erode is directed to proceed against the first petitioner herein and dispose of M.C.No.2 of 2013 in accordance with law. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

stm
To

1.The Judicial Magistrate No.II,
Erode.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.85185

Cr1.O.P.No.15458 of 2013

SAI (CO)
GSP (24/01/2019)



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