

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.08.2018

Pronounced on : 05.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.5645 of 2011

and

M.P.No.1 of 2010

1.Gayathri,
W/o.Subramanian.

2.Subramani,
S/o.Sundaram.

3.Malar @ Malarkodi,
W/o.Anbuselvam.

4.Anbuselvam,
S/o.Krishnamurthy.

... Petitioners/Respondent
Nos.2 to 5

Vs.

Usha,

W/o.Kumaresan Mudaliar.

... Respondent/Petitioner

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the entire records relating to the complaint filed by the respondent in M.C.No.1 of 2011, on the file of the District Munsif-cum-Judicial Magistrate Court, Portonova (Parangipettai) and quash the proceedings so far as the petitioners are concerned as illegal.

For Petitioners: Mr.B.M.Premkumar

For Respondent : Mr.D.Chandrakanth

O R D E R

The petitioners herein are the respondents in M.C.No.1 of 2011 pending trial on the file of the District Munsif-cum-Judicial Magistrate Court, Portonova (Parangipettai) on a private complaint filed by the respondent herein who is the petitioner seeking monetary relief under section 20 of the Protection of Women from Domestic Violence Act 2005 herein after referred to as "DV Act".

2.For the purpose of better understanding of the case, the relationship of the petitioners with the respondent is that the

1st petitioner and the 3rd petitioners are the foster daughter of the respondent. The 2nd petitioner is the husband of the 1st petitioner and the 4th petitioner is the husband of the 3rd petitioner. The respondent is the 3rd wife of one Kumaresan, who is the father of 1st and 3rd petitioners.

3.The averments in the complaint is that the marriage between the respondent and the said Kumaresan, took place on 04.04.2005 at Mayilam Murugan Temple, Tindivanam. During the marriage, the respondent's brother had given Rs.50,000/- (Rupees fifty thousand only) apart from 15 sovereigns of gold jewels and had also incurred Rs.1,00,000/- (Rupees One lakh only) as marriage expenses. After the marriage, the respondent and the said Kumaresan had lived as husband and wife at Ariyakasthi Village. The petitioner Nos.1 and 3 are the daughters of Kumaresan born through his 1st wife late Kumudha, who had passed away on 27.12.2001 due to prolonged heart problem. Thereafter, the said Kumaresan had another marriage, which got divorced and the details are not known. Thereafter, the respondent had married the said Kumaresan. This marriage was not to the liking of the 1st and 3rd petitioners. The said Kumaresan was earning Rs.25,000/- (Rupees Twenty five thousand only) as cloth cutting master in a private company Amaraivadi Village in Gujarat and three months after the marriage, the respondent lived in Gujarat for six months peacefully. The said Kumaresan was building properties at Amaraivadi worth more than Rs.50,00,000/- (Rupees Fifty lakh only) and he had a bank deposit Rs.15,00,000/- (Rupees fifteen lakh only). Due to jealousy and unable to digest the peaceful life of the respondent and the said Kumaresan, the petitioners herein day-by-day make confusion and caused quarrel between the respondent and the said Kumaresan by poisoning his mind. The said Kumaresan became a puppet at the hands of the petitioners and started ill treating the respondent and denied to provide rice, grocery and other basic amenities.

4.Further, it is averred that the respondent got pregnant during May 2005 and March 2006 and the petitioners herein had voluntarily aborted sensing that the 1st and 3rd petitioner being female heirs of the said Kumaresan, if male child is born to Kumaresan through the respondent all the properties of the said Kumaresan would go to the male child and the petitioner Nos.1 and 3 will not be able to get even a single property. Hence, due to the acts of the petitioners, the respondent had suffered a lot and the marital life of the respondent became tragedy and she had preferred a police complaint in Gujarat on 10.05.2006 against the petitioners and the said Kumaresan for the offences under Sections 498A, 323, 294-B, 506(ii) and 379 of the Indian Penal Code.

5.The respondent when chased away from the family life, she was at the mercy of her brother Karthikeyan for sometime in Gujarat and thereafter, she shifted to Ariyakoshti Village, Cuddalore District and living with her mother Shantha. Hence, seeking monetary protection of Monthly maintenance of Rs.10,000/- (Rupees ten thousand only) and Rs.20,00,000/- (Rupees twenty lakh only) as compensation from the petitioners.

6.The contention of the petitioners is that the 1st petitioner is married to the 2nd petitioner on 27.04.1997 and the 3rd petitioner is married to the 4th petitioner on 07.05.2000. After the marriage, the petitioners were residing at their respective houses separately in Gujarat. The marriage between the respondent and the said Kumaresan was not even informed to them and they came to know only when the respondent had preferred a complaint before the Amaraivadi Police Station on 10.05.2006. They had never shared common household and their existed no domestic relationship between the petitioners and the respondent, since the 2nd and 4th petitioners are employed in Central Government and serving in Gujarat, on a false complaint they are roped in the above case.

7.They have also submitted that a charge sheet was also filed based on the police complaint of the respondent in C.C.No.1397 of 2006. The Metropolitan Magistrate Court No.7 at Ahamedabad by Judgment dated 31.03.2011 had acquitted the petitioners and the said Kumaresan from the above case after full-fledged trial.

8.Though, the petitioners contended that legally the Domestic Violence case is not maintainable as the petitioners had never shared a common household and had no domestic relationship with the respondent and invoking provisions under Domestic Violence Act and filing the above case in M.C.No.1 of 2011 before the District Munsif-cum-Judicial Magistrate, Portnova, Parangipettai is an abuse of process of Court and they are certain to succeed in the same.

9.According to the petitioners, the said Kumaresan is not living with the petitioners and living separately and the respondent being a foster mother and the proceedings initiated is manifestly attended with an ulterior motive to brook vengeance. During the pendency of the above proceedings a compromise had been arrived at between the petitioners and the respondent, in pursuant to that a Memorandum of compromise was filed before this Court signed by the petitioners and the said Kumaresan and the respondent. As per the compromise arrived, the respondent Usha agreed to receive Rs.5,00,000/- (Rupees five lakh only) as full and final settlement towards all her demands

and further agreed to file petition for Divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955 and the said petition had been filed before the Sub-Judge at Chidambaram, which has been taken on file as HMOP No.65 of 2018 on 10.08.2018 and the said petition is posted to 14.02.2019 after six months for evidence for passing Decree in the divorce petition as requirement in the Hindu Marriage Act 1955.

10.Taking into consideration, the sufferings and harassment, the pain to undergo the ordeal of trial, further the petitioners are residing at Gujarat and to undergo a trial at Portonova, Parangipettai would cause great disturbance in their family life to buy peace not only to the petitioners and also for their father Kumaresan. The petitioners and the said Kumaresan had come for a settlement and compromise, which the respondent had agreed and a Memorandum of compromise was signed between them.

11.It is admitted by both the petitioners and the respondent that out of the compromise amount of Rs.5,00,000/- (Rupees five lakh only) the said Kumaresan i.e. the father of the 1st and 3rd petitioner and the estranged husband of the respondent had mobilized Rs.2,00,000/- (Rupees two lakh only) and the said Rs.2,00,000/- (Rupees two lakh only) had been paid by way of Demand Draft of Bank of Baroda, Khokhra Mehmedabad, Gujarat and the same was received by the respondent on 03.08.2018 and she had also acknowledged the same, on the same day, the Memorandum of compromise had also been signed. The balance of Rs.3,00,000/- (Rupees three lakh only) which has been mobilized by the petitioners herein is to be paid at the time of deposing evidence in the Mutual consent divorce petition in HMOP No.65 of 2018 before the Sub-Court, Chidambaram. The copy of the Demand Draft for Rs.3,01,200/- drawn on State Bank of India, Ashram Road Branch, Ahmedabad is produced before this Court. The copy of the Demand Draft is to be handed over on fulfillment of the condition as per the Compromise memo.

12.Further, it was submitted by the petitioners that the HMOP No.65 of 2018 had been filed on 10.08.2018 between the said Kumaresan and the respondent in the said proceedings it had been categorically mentioned that the said Kumaresan and the respondent had separated on 12.07.2006 and thereon, they have been living separately. There is also mention about the criminal complaint of the respondent against the said Kumaresan and others, which was taken as C.C.No.1397 of 2006 and the Metropolitan Magistrate No.7 Ahmedabad by judgment dated 31.03.2011 had acquitted the said Kumaresan from the case. It is an admitted case of the respondent that from 12.07.2006 they are living separately.

13.Further, the petitioners had relied upon the judgment of the Apex Court reported in 2017 AIR SC 4417 the case of AMARDEEP SINGH VS. HARVIN GAUR, wherein the Apex Court had held that cooling off period can be waived on satisfaction of the court on an application after one week of the filing of the HMOP. In this citation, the Apex court had elaborately referring to various other judgments had found that marriage totally unworkable, emotionally dead, beyond salvage and broken down irretrievably. The waiver of the period is a guided discretion in consideration of interest of justice when there is no chance of reconsideration, the parties when already separated for a longer period can be granted. Further it is held that the object of waiting period of six months was not to perpetuate a purposeless marriage or to prolong the agony of the parties when there are no chance of reconsideration and had also given six points for consideration.

14.On consideration the facts of the above case in light of the Hon'ble Supreme Court judgment, this court feels that this will be a fit case wherein the Sub-Judge Chidambaram in HMOP No.65 of 2018 to apply the principles of the Apex Court for waiver of the cooling off period.

15.In view of the conclusion that the allegations in the complaint petition do not make out any offence against any of the respondents in M.C.No.1 of 2010. It would be futile to allow the continuance of the proceedings against all the respondents. In the premises as aforesaid, this Court quashes cognizance taken by the Magistrate of offence as against the petitioner and the said Kumaresan.

16.Accordingly, this Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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To

1.The District Munsif cum Judicial Magistrate,
Portonova (Parangipettai).

+1 CC to Mr.D. Chandrakanth, Advocate sr 68812.

+2 Ccs to Mr.B.M. Premkumar, Advocate sr 68830

Cr1.O.P.No.5645 of 2011

SP(10/10/2018)