

WIN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

CrI.OP.No.7711 of 2011

and

M.P.No.1 of 2011

1.K.Anandhan
2.Kesavan
3.Kanagammal
4.Venkatachalapathy
5.Harikrishnan
6.Umaiya
7.Kumari
8.Kalyani
9.Rajagopal
10.Moorthy
11.Soodamani

...Petitioners/Respondents

..Vs..

1.N.Neela Kodi
2.Minor Amsapriya
3.Minor Eswanth
(Respondents 2&3 Rep. by Mother N.Neelakodi)

...Respondents/Complainant

PRAYER: This petition is filed under Section 482 of the Criminal Procedure Code to call for the records in connection with M.C.No.4 of 2010 on the file of the learned Judicial Magistrate-II, Villupuram, and to quash the same.

For Petitioners : Mr.R.Srinivas

For respondents : Mr.S.Sivakumar

O R D E R

This petition is filed by the accused in M.C.No.4 of 2010 on the file of the learned Judicial Magistrate-II, Villupuram, to quash the proceedings pending against them.

2. The complaint in M.C.No.4 of 2010 was filed by the first respondent on her behalf and her minor children as against these petitioners for reliefs under Sections 17, 18, 19, 20, 21, 23(1) & (2) of the "Protection of Women from Domestic Violence Act, 2005".

3. The case of the first respondent/complainant is that, the first petitioner is the brother of her sister's husband and her sister one Devi was married to the 4th petitioner. The first petitioner and the respondent had a love affair and they had premarital relationship and she conceived out of it. When she was three months pregnant, it came into light and a Panchayath was held. Pursuant to the same, the marriage between the first petitioner and the first respondent was solemnized in a temple at Neyveli on 16.07.1997. Out of the wedlock, she gave birth to a female child namely Amsapriya on 11.04.1998 and a male child Eswanths in the year 2004. After 2004, the first petitioner had developed intimacy with the 7th petitioner and used to consume alcohol and used to beat her under the influence of liquor. Other petitioners the in-laws, have also harassed the first respondent/complainant for want of dowry and therefore, she lodged a complaint before the Valavanur Police Station on 07.12.2009 and a case was registered as against the first petitioner and others in Crime No.9 of 2009. The first accused had also snatched away her Thali on 04.12.2009 for which, another complaint was lodged in Crime No.835 of 2009 for the offences under Sections 294(b), 352 and 370 of IPC. For yet another incident, another complaint was lodged in Crime No.49 of 2010 for the offence under Section 294(b) IPC. Since, there is no scope for reunion, she filed the above complaint under the Protection of Women from Domestic Violence Act, 2005.

4. Heard Mr.R.Srinivas, the learned Counsel for the petitioners and Mr.S.Sivakumar, the learned Counsel for the respondents/complainant.

5. Mr.Srinivas, the learned Counsel for the petitioners submit that the marriage between the first petitioner and the first respondent was a love marriage. Even before the marriage, she was pregnant and the marriage was solemnized without the knowledge of the other petitioners/in-laws. Even according to the first respondent/complainant, they lived together for more than 7 years and the complainant also gave birth to two children out of their wedlock. There was a misunderstanding between the husband and wife and thereafter, they are living separately and in order to harass, the first petitioner/her husband and other in-laws, the first respondent/complainant, foisted false criminal cases against the first petitioner and others and the same were either closed as mistake of fact or ended with an order of acquittal. Not satisfied with the same, she filed the present complaint.

6. Mr.Srinivas, the learned Counsel for the petitioners submit that the learned Judicial Magistrate, without ascertaining whether any domestic violence had taken place or not, has passed an ex-parte interim order against the provisions

under Section 20 of the "Protection of Women from Domestic Violence Act, 2005". Any order under Section 20 of the Act can be passed only while disposing an application under sub-Section (1) of Section 12 of the Act and as such, this ex-parte interim order granted by the learned Magistrate is against law.

7. Per contra, Mr.S.Sivakumar, the learned Counsel for the respondents/complainant submits that the grounds raised by the petitioners can be appreciated only during trial and it cannot be quashed at the inception without even allowing the respondent to adduce her evidence before the Court. He further submits that there are specific averments as against all the petitioners and they are also liable to be prosecuted and the concern Magistrate after satisfying with the averments made against the other petitioners and after recording the sworn statement, taken cognizance as against the petitioners and they cannot be discharged from the Protection of Women from Domestic Violence Act, 2005. The learned Counsel for the respondent further submits that under Section 23 of the Act, the learned Magistrate is entitled to pass any interim order in any proceedings initiated under the Domestic Violence Act. According to him, Section 23 of the Domestic Violence Act empowers the Magistrate to pass any such interim order as he deems just and proper, if he is satisfied that an application, prima facie, discloses that the respondent has committed or is committing an act of domestic violence.

8. By reply, the learned Counsel for the petitioners submits that the learned Magistrate himself has observed that there are no materials to show that there was any Domestic Violence that has been committed or committing. Hence, it would not be appropriate for the learned Magistrate to pass an interim order and as such, he prays for allowing the present petition.

9. This Court paid its anxious consideration to the submissions made on either side and also perused the available records.

10. The 1st petitioner herein is the husband of the 1st respondent, the 2nd and 3rd petitioners are his parents. The 4th and 5th petitioners are brothers of the 1st petitioner and the 6th petitioner is his sister. The petitioners 8 and 9 are the uncle and aunt of the first petitioner and the 7th and 11th petitioners are their daughters and the 10th petitioner is their son. The marriage between the first petitioner and the first respondent was solemnized in the year 1997 and the first respondent gave birth to a female child in the year 1998 and a male child in the year 2004 and though there are allegations of harassment in between them, they have separated in the year 2007 and thereafter, the police complaint was lodged in the year 2009

and the same was also ended with acquittal on 06.10.2010 and this complaint under the Protection of Women from Domestic Violence Act, was taken on file on 04.10.2010.

11. Admittedly, the marriage between the first petitioner and the first respondent was a love marriage and even before the marriage, the first respondent was pregnant by 3 months. Before filing his complaint under the domestic violence act, the complainant had also lodged criminal case against the first petitioner for the offence punishable under Sections 498(A) and 506(ii) of IPC and the same after a fulfledged trial, ended in acquittal by judgment dated 06.10.2010 and in this complaint, the first respondent has not made any averment as against the other petitioners. The trial in C.C.No.422 of 2009 was proceeded as against the first petitioner on the very same set of allegations and the trial Court found the evidence of the first respondent as not trust worthy, acquitted the first petitioner from the framed against him. As against the order of acquittal, no appeal was filed either by the State or by the first respondent/complainant and as such there is no averment as against the other petitioners in her previous complaint.

12. In the previous complaint before the police there is no averment as against the other petitioners. Though, on the very same set of allegations made against the first petitioner, the learned Judicial Magistrate-II, Villupuram, passed an order of acquittal in favour of the first petitioner, that cannot be a ground to quash the proceedings pending against him in M.C.No.4 of 2010. However, taking into account that there was no allegations as against other petitioners in her previous complaint, this Criminal Original Petition is partly allowed insofar as the petitioners 2 to 11.

12(a). With regard to the ground raised by the learned Counsel for the petitioners for the interim maintenance granted by the trial Court, Section 23 of the Act empowers the Magistrate to pass such an interim order as he deems just and proper in the circumstances which has been placed before him. For better appreciation, Section 23 of the Protection of Women From Domestic Violence Act is extracted hereunder;

"23. Power to grant interim and ex-parte orders-(1) in any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex-parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under Section 18, section 19, section 20, Section 21 or, as the case may be, Section 22 against the respondent."

Therefore, the ground raised by the petitioners with regard to interim maintenance lacks merits and accordingly, the same stands rejected.

13. In fine, this Criminal Original Petition is partly allowed insofar as the petitioners 2 to 11/the in-laws and dismissed as against the first petitioner/husband of the first respondent. Considering the age of the petition, the trial Court is directed to expedite the trial in M.C.No.4 of 2010 and conclude the same within a period of six months from the date of receipt of copy of this order.

14. Accordingly, this petition is partly allowed with the above direction. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate-II, Villupuram.

+1cc to Mr.S.Sivakumar, Advocate, SR.No.81412.

+1cc to Mr.R.Srinivas, Advocate, SR.No.81868.

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SR(CO)

CSR: 28/01/2020