

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.11.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.8785 of 2013

and

CRL.M.P.No.1 of 2013

1.Anand Babu

2.Gowri

3.Laxmanan Died

(3rd petitioner died is made as per order

in Crl.OP.No.8785 of 2013 dated 09.11.2018)

... Petitioners

vs

1.Sharmila

2.Protection officer,
Domestic Violence,
Chennai-600 001.

... Respondents

PRAYER: This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records filed in connection with the M.C.No.6 of 2013 on the file of the XXIII Metropolitan Magistrate at Saidapet, Chennai.

For Petitioners : Mr.A.S.Narasimhan
for M/s.D.Dhanam

For R1 : Mr.D.Kanaga Sundaram
for M/s.S.Kaithamalai Kumaran

For R2 : Mr.R.Surya Prakash
Government Advocate(Crl.Side)

O R D E R

This petition has been filed by the respondents 1, 2 and 3 in MC.No.6 of 2013 on the file of the XXIII, Metropolitan Magistrate, Saidapet, Chennai, to quash the proceedings against them in the above MC.

2.The first respondent has submitted an application before the second respondent on 19.12.2012 stating that the marriage between the first petitioner and herself was solemnized on

05.06.2009, and thereafter, she had lived with the first petitioner herein in a shared household. She further stated that the petitioners 2 and 3 are the parents of the first petitioner and after marriage, at the instigation of the petitioners 2 and 3 and also the first petitioner's brother viz., Jayakumar, the first petitioner caused cruelty to her demanding dowry and finally on 02.03.2011, they have driven out her from the house. Thereafter, she is residing with her parents along with her child. She further stated that the petitioners herein have retained her Jewels and also demanded further dowry and warned her that if she returned to the matrimonial home without additional jewels, she will be done away. Based on the said application, the second respondent conducted an enquiry and submitted a Domestic incident report on 07.01.2013. Based on the said report, the learned XXIII, Metropolitan Magistrate, Saidapet, Chennai, has taken the case on file in M.C.No.06 of 2013 under the Protection of Women from Domestic Violence Act, 2005 and issued summons to the petitioners herein. After receipt of the summons, the petitioners herein have filed the present petition under Section 482 Cr.P.C to quash the proceedings against them.

3.The learned counsel for the petitioners has submitted that in the application which was submitted by the first respondent before the second respondent, and also in the Domestic Incident Report submitted by the second respondent, no allegation has been made against the second petitioner. He further submitted that already the first petitioner has filed H.M.O.P.No.117 of 2011, on the file of the Sub-Judge, Tambaram and the same was dismissed. As against the same, the first petitioner has filed an appeal before the Principal District Judge, Kancheepuram at Chengalpet and the same has been allowed and remanded back to the Trial Court for fresh disposal. He further submit that the first respondent has already filed a petition under Section 125 Cr.P.C seeking maintenance before the Family Court, Chennai and the same has been numbered in M.C.No.70 of 2015 and in the said petition, an ex-parte order was passed without serving notice to the first petitioner herein and subsequently an execution petition was filed under Section 128 Cr.P.C and only in that petition, notice was served and only thereafter, the first petitioner came to know that in M.C.No.70 of 2015, an ex-parte order was passed and immediately, the first petitioner has filed a petition in M.P.No.292 of 2018 to set aside the ex-parte order passed in M.C.No.117 of 2017 and the same is still pending. He further submitted that since already the first petitioner has filed a petition under Section 125 Cr.P.C seeking maintenance, it is not open to her to file an another petition for the same relief under the provisions of Protection of Women from Domestic Violence Act. He further submitted that after filing of this

petition, the first respondent has lodged a complaint before the police and got back the Jewels from the first petitioner and only with a view to harass the petitioners, this petition has been filed and therefore he prayed to quash the proceedings against the petitioners herein.

4.Per contra, the learned counsel for the first respondent has submitted that in the application submitted by the first respondent before the second respondent dated 19.12.2012 and also in the Domestic incident Report submitted by the second respondent, it is clearly stated that in the year 2010, the petitioner herein and the first petitioner's brother viz., Jaya Kumar have committed Domestic Violence. It is also stated that at the instigation of the petitioners 2 and 3 and the first petitioner's brother, first petitioner has caused cruelty to the first respondent by demanding dowry and therefore, a prima facie case is made out against the petitioners herein. He further submitted that if the petitioners are having valid defence let them put forth their defence before the trial Court and therefore he prayed to dismiss the petition.

5.The learned Government Advocate (Crl.Side) has adopted the arguments advanced by the learned counsel for the first respondent.

6.It is seen from the typed set of papers filed by the petitioners that on 19.12.2012, the first petitioner herein has submitted an application before the second respondent. In that application it is also stated that at the instigation of the petitioners 2 and 3 herein and the brother of the first petitioner viz., Jayakumar, the first petitioner caused cruelty to her by demanding dowry. She also stated that the petitioners herein have retained her jewels. She also stated that by demanding dowry they have driven out her from Matrimonial home on 02.03.2011 and from that date onwards she is living with her parents along with her child. Based on the said allegations, the second respondent has conducted an enquiry and submitted a report on 07.01.2013 recommending certain reliefs under the Protection of Women from Domestic violence Act, 2005. It appears that a prima facie case is made out against the petitioners herein.

7.It is also to be pointed out that as per Section 26 of the Domestic violence Act, the reliefs available under Sections 18 to 22 may be sought for in addition to and along with any other relief that the aggrieved person may seek in suit or legal

proceeding before a Civil or Criminal Court. Therefore, merely because the 1st petitioner has already filed petition under Section 125 Cr.P.C, it cannot be said that she is not entitled to file petition under Domestic Violence Act.

8.The disputed question of facts cannot be decided in the petition filed under Section 482 Cr.P.C., It is open to the petitioners to place the materials before the Trial Court and establish that the allegations made against them are baseless. Therefore, this Court is of the view that this petition is liable to be dismissed.

9.In the result, the Criminal Original Petition is dismissed. Considering the fact that the second petitioner is an old woman, her personal appearance before the Trial Court is dispensed with. She should appear before the Trial Court as and when required by the Trial Court. Since during the pendency of this petition, the 3rd petitioner died, the proceedings against him is abated. Consequently, Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

stm

To

1.The Protection Officer,
Domestic Violence, Chennai-600 001.

2.The XXIII Metropolitan Magistrate, Saidapet,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

4.The Chief Judicial Magistrate,
Egmore, Chennai.

+1 cc to M/s.S.Kaithamalai kumaran, Advocate Sr.No.81789

Cr1.O.P.No.8785 of 2013

GP(CO)

CSL/28.01.2019