

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.06.2018

DELIVERED ON: 02.07.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.12512 of 2011

and

M.P.No.1 of 2011

1. N.Somasundaram

2. S.Jegathambal

3 . S.Sivakumar

4 . S.Chitrasaraswathi ..Petitioners/Accused 2to5

Vs.

J.Maheswari ..Respondent/Defacto Complainant

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records pertaining to C.M.P.No.229 of 2011 pending on the file of the Judicial Magistrate No.I, Gobichettypalayam and quash the same.

For Petitioners : Mr.Ma.Pa. Thangavel

For Respondent : No appearance

ORDER

The petitioners are arrayed as A2 to A5 in C.M.P.No.229 of 2011 on the file of the Judicial Magistrate No.1, Gobichettypalayam. The Protection Officer, Social Welfare Department filed a petition in C.M.P.No.229 of 2011 under Sections 18, 20, 22 of the Protection of Women from Domestic Violence Act, 2005, on the basis of a complaint dated 23.11.2010 preferred by one Maheswari, who is the respondent herein against her husband (A1) and his parents (A2 and A3), brother-in-law (A4) and sister-in-law (A5).

2. Mr.Ma.pa.Thangavel, learned counsel appearing for the petitioners would contend that there are no specific allegations against the petitioners herein and that the petitioners 3 and 4 are living separately and hence, the petition in CMP No.229 of 2011 on the file of the Judicial Magistrate No.I, Gobichettypalam should be quashed.

<https://hcservices.ecourts.gov.in/hcservices/> 3. A perusal of the complaint dated 25.11.2010 preferred by the respondent (Maheswari) shows that she got married to the first accused on 11.6.2011 and both of them are

blessed with two girl children by name Para Nandini Owsuba aged 9 years and Manjusri aged 8 years. The complaint under the Protection of Women from Domestic Violence Act, 2005 has been given after 10 years from the date of marriage. The main allegation of the respondent is that her husband does not go for any job and also suspects her modesty. According to her, he caused physical as well as mental injuries on her. The allegations against the present petitioners are that they encouraged the first accused for torturing her. It is clear from the petition in CMP.No.229 of 2011 that there are specific allegations as against the first accused, who is the husband of the respondent. As far as the other accused (petitioners herein) are concerned, the allegations like encouraging the first accused in torturing the respondent would not come under Section 3 of the Protection of Women from Domestic Violence Act, 2005 (herein after referred to Act). Section 3 reads as follows:-

3. Definition of domestic violence- For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it -

[a] harms or injuries or endangers the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

[b] harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

[c] has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b) ; or

[d] otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

The averment made in the complaint preferred by the respondent against the present petitioners do not fall under the Protection of Women from Domestic Violence Act, 2005. As already observed, all the allegations are made only against her husband which are disputed question of fact. As far as the present petitioners are concerned, since there are no specific allegations in the complaint, the trial court cannot proceed further against them. I therefore, hold that the proceedings as against the petitioners in CMP.No.229 of 2011 on the file Judicial Magistrate No.1, Gopichetipalayam is quashed.

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<https://hcservices.ecourts.gov.in/hcservices/> In the result, the proceedings as against the petitioners in CMP No.229 of 2011 on the file of Judicial Magistrate No.1, Gopichetipalayam is quashed. The learned

Judicial Magistrate No.1, Gopichettipalayam is directed to expedite the trial in CMP No.229 of 2011, as against the first accused and dispose of the same within a period of 6 months, from the date of receipt of a copy of this order.

5. With the above observation this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mst

To

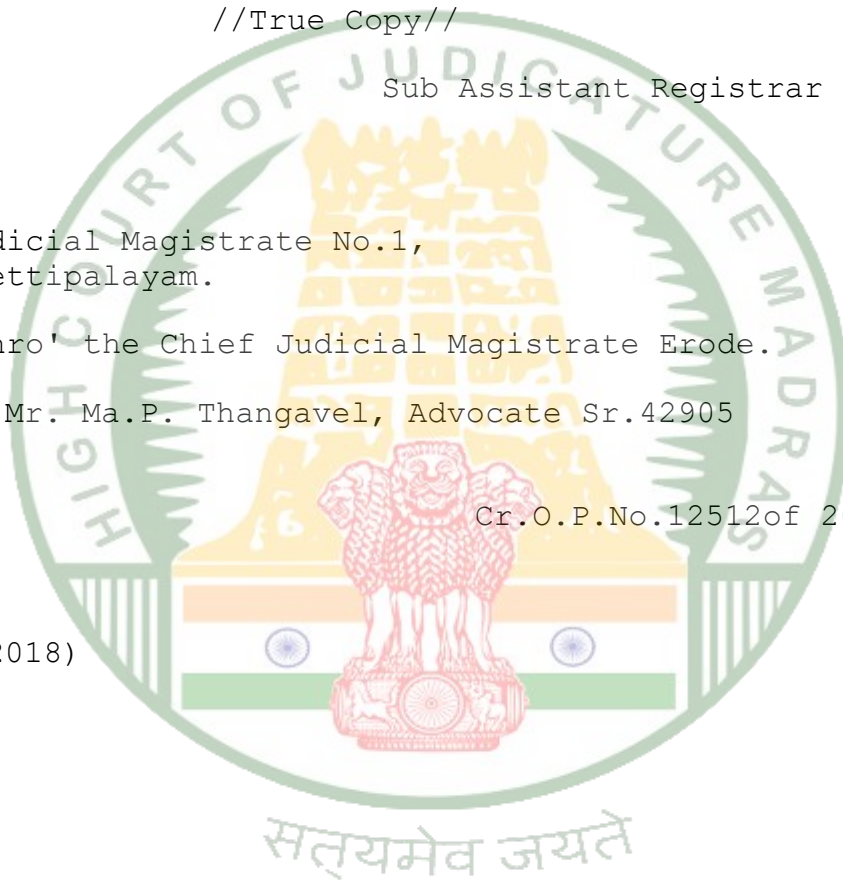
1. The Judicial Magistrate No.1,
Gopichettipalayam.

2. -do- Thro' the Chief Judicial Magistrate Erode.

+ 1 cc to Mr. Ma.P. Thangavel, Advocate Sr.42905

Cr.O.P.No.12512of 2011

CA(CO)
EU(18/07/2018)



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