

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2018

CORAM

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

Crl.O.P.No.16538 of 2011
and
M.P.1 of 2011

Mr.R.Seran ... Petitioner
Vs

1. Mrs.R.Vijayabharathi
2. The District Social Welfare Officer,
The District Social Welfare Office,
Collectorate, Vellore,
Thiruvannamalai Road,
Thiruvannamalai District.
3. The District Social Welfare Officer,
P Block, 4th Floor,
Sathuvachary, Vellore - 9. ... Respondents

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in M.C.No.1 of 2011 pending on the file of the learned Judicial Magistrate, Polur and quash the same.

For Petitioner :Mr.D.Prabhu Mukunth Arunkumar

For R2 & R3 :Mr.Harihara Arun Soma Sankar
Government Advocate (Crl.Side)

For R1 :No Appearance

ORDER

The prayer sought for in the present petition is to call for the records in M.C.No.1 of 2011 pending on the file of the learned Judicial Magistrate, Polur and quash the same.

2. The petitioner Mr.R.Seran has filed the present petition under Section 482 Cr.P.C. to quash the proceedings initiated by the first respondent herein under the Domestic Violence Act. The petitioner and the first respondent married as per the Hindu Rights and Customs Act on 13.09.1999 at Ranipet. According to the petitioner, since the first respondent left the matrimonial home on 25.06.2000, he filed a petition in H.M.O.P.No.11 of 2006 before the Sub Court, seeking for a decree of divorce dissolving the marriage

between the first respondent and him and that an ex-parte decree of divorce was also passed on 06.09.2006 by the learned Subordinate Judge, Ranipet. It is further contended by the petitioner that the first respondent even after grant of a decree of divorce, started harassing him by filing the following petitions:-

- (i) A petition in M.C.No.1 of 2011 under Domestic Violence Act before Judicial Magistrate, Polur and
- (ii) A petition in M.C.No.6 of 2011 under Section 125 of the Code of Criminal Procedure before the Judicial Magistrate, Polur.

3. The contention of Mr.D.Prabhu Mukunth Arunkum, learned counsel appearing for the petitioner is that the filing of the petition under the Domestic Violence Act in M.C.No.1 of 2011 is not maintainable on the following grounds.

- (i) The Domestic Violence Act was passed in the year 2005 and came into force w.e.f. 20.06.2006 and the Act does not have retrospective effect.
- (ii) The 1st respondent is divorced by the petitioner herein on 11.09.2006 as evidenced by the decree of divorce passed by the Sub Judge, Ranipet dated 11.09.2006 and therefore, she cannot file a petition in the year 2011 under the Domestic Violence Act.
- (iii) The allegations of domestic violence did not take place during the period when the petitioner and the 1st respondent were living together as husband and wife, since the 1st respondent left the matrimonial home during the year 2000.

4. It is relevant to extract Section 2(a) of the Act, which defines as "aggrieved person". "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 of the domestic violence by the respondent.

5. Section 2(a) of the Act includes within its ambit a woman who is or has been in a domestic relationship with the respondent and has allegedly been subjected to domestic violence by the respondent. Section 2(f) of the Act defines "domestic relationship". The words used are "a relationship between two persons who live or have, at any point of time, lived together in a shared household." In V.B.Bhanot Vs. Savita Bhanot reported in (2012) 3 SCC 183, it has been held by the Honourable Supreme Court that the language employed in Section 2(f) indicates that two persons shall be deemed to be in a domestic relationship if they had lived together at any point of time, even prior to coming into force of the Act and

are not living together, after coming into force of the Act. It is also held that the use of words "who live or have at any point of time lived together" in the section is an indicator of the legislative intent and makes it quite explicit that a person will be deemed to be in domestic relationship even if he had lived together with the respondent at a point prior to coming into force of the Act and it would be sufficient to say that domestic relationship means a relationship between two persons.

6. The Honourable Supreme Court further held that the definitions of domestic relationship as set out under 2(f) of the Act, includes "a relationship in the nature of marriage" which is held to be a relationship akin to common law marriage as set out in D.Velusamy Vs. D.Patchaiamma reported in AIR 2011 SC 479 and therefore, the question of restricting the applicability of the provisions to the parties to the marriage subsisting as on the date of coming into force of the Act does not arise.

7. In fact, the domestic relationship as laid down in Section 2(f) of the Act includes any relationship either living at the present moment or "have at any point of time" in the past lived together in a shared household. The question, whether a woman, who was in domestic relationship with the respondent and was subjected to domestic violence prior to coming into force of the Act falls within the definition of "aggrieved person" so as to make her entitled to invoke the jurisdiction of the court under Section 12 of the Act for various reliefs provided for under the Act, was specifically dealt with by the Honourable Supreme Court in Savita Bhanot's case (cited supra). It is also clearly held that the protection of women from Domestic Violence Act has retrospective effect.

8. Learned counsel appearing for the petitioner relied on a decision in V.Pounraj and others Vs. Pckia Lakshmi @ Vani reported in 2008(1) MLJ (Cr1.) 984, in which a single Judge of this court has held that "Divorced wife is not entitled to file a complaint under the provisions of Protection of Women from Domestic Violence Act, 2005 because the complainant should have domestic relationship with the respondent to file a complaint". In the light of the decision rendered by the Honourable Supreme Court in V.B.Bhanot Vs. Savita Bhanot reported in (2012) 3 SCC 183, the above said ruling rendered by a single bench of this court cannot be applied.

9. The third contention of the learned counsel appearing for the petitioner is that since the 1st respondent left the matrimonial home in the year 2000 itself and the date of alleged violence as per M.C.No.1 of 2011 is subsequent to it, the petition itself is not maintainable. This is a disputed question of fact which cannot be gone into at this stage.

Therefore, all the grounds raised by the learned counsel for the petitioner fails and the criminal original petition is liable to be dismissed.

10. In the result, the criminal original petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

mst

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The District Social Welfare Officer,
The District Social Welfare Office,
Collectorate, Vellore,
Thiruvannamalai Road,
Thiruvannamalai District.

2. The District Social Welfare Officer,
P Block, 4th Floor,
Sathuvachary, Vellore - 9.

3.The Public Prosecutor,
Madras High Court,
Chennai.

4.The Judicial Magistrate, Polur

+lcc to Mr.Prabhu Mukunth Arunkumar, Advocate Sr.No.29693

+lcc to Mr.G.Hari Hara Arun Soma Sankar, Advocate SR.No.29767

RSI(CO)

sm:10.5.2018

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