

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.07.2018
Pronounced on : 06.09.2018

CORAM
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.17388 of 2011

1.M.Dhanaraj
S/o.Muthu,

2.Mrs.Shantha Dhanaraj
W/o.Dhanaraj

3.M.Pushparaj
S/o.Muthu,

4.Rani pushparaj
W/o.Pushparaj

... Petitioners

Vs.

1.Mrs.Monisha @ Arthi
W/o.Rajkumar,

2.D.Rajkumar
S/o.M.Dhanraj,

3.Ms.Rajeshwari Govindan
W/o.Dhanaraj,

4.Saravana Kumar
S/o.Pushparaj

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in D.A.V.No.15 of 2010, on the file of the learned Judicial Magistrate No.VI, Coimbatore and quash the same.

For Petitioners: Mr.G.Sudhagar

For R1 : No appearance [Name printed]

For R2 to R4 : Not ready in notice

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O R D E R

This Criminal Original Petition is filed to call for the records in D.V.A.No.15 of 2010, on the file of the Judicial Magistrate Court No.VI, Coimbatore and quash the same.

2.It is seen from the records that the name of the third respondent, who is the fourth respondent in D.V.A.No.15 of 2010 has been mentioned as Mrs.Shantha Dhanaraj, Wife of Dhanaraj instead of Mrs.Rajeshwari Govindan.

3.The above Criminal Original Petition has been filed by the petitioners who are respondent Nos.2, 3, 5 & 6 in D.V.A.No.15 of 2010. The case has been filed by the first respondent for the offence under Section 12 of Protection of Women from Domestic Violence Act, 2005, which is pending trial in D.V.A.No.15 of 2010 on the file of the Judicial Magistrate Court No.VI, Coimbatore.

4.The learned counsel appearing for the petitioners contended that the first respondent had preferred a complaint under Section 12 of Protection of Women from Domestic Violence Act, 2005 (D.V.Act), for the protection order under Section 18 (a), to return back the jewels under Section 19(8), not to alienate any movable and immovable properties under section 18 (e), for compensation under Section 22, for monthly maintenance Under Section 20(3) and for appropriate legal action against the respondents 1 to 7.

5.The 1st petitioner is the father-in-law, 2nd petitioner is the mother-in-law, 3rd petitioner is father-in-law's brother and the 4th petitioner is the wife of father-in-law's brother.

6.The 1st respondent has not appeared in this case, despite notice served on the respondents and affidavit of service in proof of service have been filed. The names of the respondents have been printed in the cause list, despite the same, there has been no appearance on the side of the respondents. The case is pending from the year 2011, hence adjourning the case for appearance of the respondents would serve no purpose. Hence, this Court propose to prefer with the case on the basis of the materials available and on the submissions of the learned counsel appearing for the petitioners.

7.The case of the respondents is that the first respondent got engaged on 14.12.2008 and the marriage between the 1st respondent and 2nd respondent namely D.Rajkumar, the son of the petitioners 1 and 2 was solemnised on 15.02.2009 at

G.B.Mahal, Tirupathur, North Arcot District. After the marriage, the first and second respondent lived together at the second respondent's house at Samudivattom, Achamangalam Village, Tirupathur Taluk, Vellore District. The first respondent is a Masters in Engineering (Communication System) and working as Senior System Engineer and drawing a salary of Rs.3.6 lakhs per annum and her husband, the said D.Rajkumar is working as Program Analyst in Cognixant Technology Solutions and drawing a salary of Rs.3 lakhs per annum. Since it was difficult for the first and second respondents to attend the office from Tirupathur, hence, the first and second respondents alongwith the other respondents shifted to East Tambaram, Chennai.

8.Further, contention of the respondents is that the marriage was not registered, despite the 1st respondent insisting for the same. In the meanwhile, the 1st respondent became pregnant and a female child was born on 01.12.2009. The 1st respondent was compelled to give the entire salary to meet out the family expenses of the petitioners. Further, the petitioners tortured the first respondent to get more money from the first respondent's parents. The first respondent was also forced to cook for the petitioners before leaving to office and she was not given food, when she was pregnant and was left to starve. The first respondent was forced to sleep on the floor along with other male members of the petitioners' family, despite the first respondent being pregnant. The expenditure for treatment during her pregnancy was given by the first respondent's parents. The petitioners had taken 30 sovereign of jewels and "Sreedhana" articles which was given to the first respondent during marriage and she was driven away from the matrimonial home on 13.07.2009. "Valaikappu" took place on 01.11.2009 for which the petitioners had demanded a sum of Rs.50,000/- to attend the "Valaikappu". Further, the said Rajkumar husband of the first respondent was having illegal conduct and was also Alcoholic. Unable to withstand all these actions of the petitioners and the said Rajkumar, the first respondent had given a private complaint before the Judicial Magistrate Court No.VI, Coimbatore for seeking relief under Domestic Violence Act, 2005.

9.The contention of the learned counsel appearing for the petitioners is that it is an admitted case of the first respondent that the first respondent was working as Senior System Engineer at Software Company, Chennai. For the purpose of employment, the first respondent and her husband said Rajkumar immediately after their marriage had moved to Tambaram, Chennai and they were residing there. The first petitioner who is employed as Village Administrative Officer of Vishamangalam village, Thirupathur Taluk and the 2nd petitioner is a House wife, the 3rd petitioner, who was working as Assistant Educational Officer in Madurai and the 4th petitioner who was

working as School Headmistress in Government Panchayat Union Elementary School of Makknor Village, Tirupathur Taluk were residing at their houses in Tirupathur and hence, they never share a household in common and as such there was no domestic relationship between the petitioners and the first respondent. In proof of the same, they also filed their affidavits to that effect and proof of residence by way of typed set.

10.Further, the Petitioner Nos.1, 3 and 4 being employed in Government Service are roped into brook vengeance and they have been falsely implicated in the above case by the first respondent, within an ulterior motive.

11.The learned counsel for the petitioners further submitted that they have also filed the affidavit for the proof of their residence. They further submitted that the first respondent admitted in her complaint that she was working as Senior System Engineer in a software company in Chennai and was drawing a salary of Rs.3.6 lakhs per annum and as such her claim for maintenance is un-called for.

12.The learned counsel for the petitioners further contented that the learned Judicial Magistrate No.VI, Coimbatore has got no jurisdiction to entertain the complaint, even according to the first respondent is that she had never resided in Coimbatore before the marriage or after the marriage. The Bank pass book filed in proof of her residence at Coimbatore has been created for the purpose of creating jurisdiction of the above case. Further, it could be seen that the pass book itself came into existence on 26.03.2010. Even according to the first respondent is that she had been driven away from the matrimonial home on 13.07.2009 and further, there has been no averments that she resides at Ramasamy Nagar, Marudamalai Road, Vadavalli, Coimbatore. The other averments made in the complaint are made for the purpose of the complaint, which are not sustainable both on law and facts.

13.The learned counsel for the petitioners further submitted that the first respondent and her husband said Rajkumar had lived independently in Tambaram, Chennai, in the absence of the petitioners any time resided with the first and the second respondents in a shared household. The first respondent cannot resort to file a complaint under Domestic Violence Act, 2005. Hence, the complaint filed under Domestic Violence Act, 2005 against the petitioners is liable to be quashed.

14.The learned counsel for the petitioners submits that the said Rajkumar had filed a petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act in H.M.O.P No.29 of 2010 before the Subordinate Court, Tirupathur. It is seen from the above petition that there has been some

misunderstandings between the said Rajkumar and the first respondent and the first respondent had taken back all the "Sreedhana articles" from the Tambaram residence, despite several stages of counselling and compromises made by the elderly members of both the families the first respondent never intend to change herself and the first respondent had also evaded attending the conciliation arranged by the second respondent on 14.10.2009 and 12.11.2009. All these atrocities of the first respondent were borne by the petitioners as well as the second respondent with a fond hope that the first respondent would change her behaviour, but no changes happened as expected. Hence, the steps taken by the said Rajkumar had failed due to the adamant attitude of the first respondent, which shows the first respondent's attitude not to continue with the matrimonial life with the said Rajkumar. Taking all these factors into consideration, the second respondent filed a petition before the Sub Court, Tirupatthur and the learned Sub-ordinate Judge, Tirupatthur passed an Exparte Judgement dated 23.11.2010 in H.M.O.P.No.29 of 2010 which was ordered in favour of the said Rajkumar.

15.It is further contended by the learned counsel for the petitioners that the first respondent did not approach the Protection Officer but had filed the private complaint under Domestic Violence Act, 2005 directly before the Judicial Magistrate Court No.VI, Coimbatore. Though, there is no bar to file a private complaint directly before the Judicial Magistrate Court No.VI, Coimbatore for the offence under Domestic Violence Act, 2005, the credibility of the complaint cast some doubt, since the first respondent is having adamant attitude and not participated in the reconciliation proceedings before the family counsellors, before the family Court and before this Court.

16.In view of the above and on perusal of the materials, it is found that the contention of the petitioners has to be accepted, which is un-controverted by the first respondent, who despite receipt of notice in the above case, who was made aware of pendency of the above case and failed to appear before this Court.

17.From the above it is seen that the private complaint filed by the first respondent under the Domestic Violence Act, 2005 against the petitioners with an ulterior motive to brook vengeance and to spite personal and private grudge against the parents, uncle and aunt of the said Rajkumar, the husband of the first respondent.

18.In view of the above and on perusal of the documents in the typed set of papers and the affidavit filed by the petitioners, this Court finds that the continuation of the proceedings as against the petitioners in D.V.A. No.15 of 2010

pending on the file of Judicial Magistrate Court VI, Coimbatore is quashed as against the petitioners alone.

19. Accordingly, this Criminal Original Petition stands allowed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate VI,
Coimbatore.

2.The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.17388 of 2011

RK(CO)

rrs 02/11/2018



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