

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.03.2018

DATED : 26.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

CRL.O.P.NO.2352 OF 2017

AND

CRL.M.P.NOS.1664 & 2849 OF 2017

1.L.J.Vengatesh
2.J.Lakshmi
3.S.Jawaharlal

... Petitioners

Vs.

Swapna Sridharan

... Respondent

PRAYER:

Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in DVC.No.34 of 2016 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai and to quash the same.

For Petitioners : Mr.M.Velmurugan

For Respondent : Mr.R.Marudhachalamurthy

ORDER

While the first petitioner is the husband of the Swapna Sridharan, the petitioners 2 & 3 are the mother-in-law and father-in-law respectively.

2.Heard Mr.Velmurugan, learned counsel for the petitioners and Mr.R.Marudhachalamurthy, learned counsel for the respondent.

3.The brief facts of the case is as follows:

The first petitioner got married to the respondent/Swapna Sridharan on 29.06.2015. From July 2015 to October 2015, all of them lived jointly. There was an estranged relationship between the first petitioner and the respondent herein from November

2015 onwards and on 25.06.2016, the first petitioner had filed HMOP.No.4480 of 2016 before the learned III Additional Family Court, Chennai seeking for dissolution of his marriage. Subsequently, on 30.06.2016, the respondent had filed a complaint before the Social Welfare Officer and Domestic Violence case in DVC No.34 of 2016 before the learned IX Metropolitan Magistrate, Saidapet, Chennai on 12.07.2016 against these petitioners. On 12.11.2016, a police complaint was also registered in Cr.No.9 of 2016 before the first respondent police. The proceedings in D.V.C.No.34 of 2016 under the Protection of Women from Domestic Violence Act, 2005 is under challenge in the present petition.

4.The learned counsel for the petitioners submitted that the present Domestic Violence case is nothing but an abuse of process of law. According to the learned counsel, the respondent herein had been indulging in various acts of harassment towards the petitioners and as a matter of fact, the third petitioner, who is the father-in-law of the respondent herein as well as his tenant had given a police complaint against the respondent herein for alleged acts of harassment. The learned counsel submitted that there are no specific acts of Domestic Violence in the complaint, the petition itself deserves to be quashed.

5.The learned counsel for the respondent on the other hand submitted that the petitioners herein had indulged in various acts of Domestic Violence prior to the marriage as well as during their matrimonial life. In view of such acts of Domestic Violence having been committed, the respondent as well as her mother had also earlier given complaints before police which is pending. Since the first petitioner herein had failed to maintain her, she is entitled to claim for maintenance and in view of the acts of Domestic Violence committed by the petitioners herein, she has sought for protection orders in the impugned proceedings. The learned counsel further submitted that if at all, the petitioners disputed the averments in the complaint, it is always open to them to establish the same during the course of trial and that it is pre-matured to seek for quashing the proceedings.

6.I have given careful consideration to the submissions made by the respective counsels.

7.On a perusal of the complaint filed under the Domestic Violence Act, the major grievance of the respondent is that she requires a separate household away from the petitioners 2 and 3 herein and for a matrimonial life without the interference of her in-laws. In the petition filed under Section 12 of the Domestic Violence Act, the respondent herein had narrated

various incidents prior to her marriage as well as after her marriage. As a matter of fact, she has relied upon very trivial and small issues. I am unable to comprehend as to how these small incidents could be termed as 'Domestic Violence' for the purpose of seeking the relief under the Domestic Violence Act. Before venturing to deal with the case of the petitioners, it would be appropriate to refer to the observations of the Hon'ble Supreme Court in the judgment in Preeti Gupta and another V. State of Jharkhand and another reported in 2010 (7) SCC 667 wherein the Hon'ble Apex Court had condemned that allegations of such trivial incidents and the manner in which complaints are being made in matrimonial matters. The relevant portion of the judgment is as follows:

"30. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

31. The courts are receiving a large number of cases emanating from section 498-A of the Indian Penal Code which reads as under:-

"498-A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.--For the purposes of this section, 'cruelty' means:-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

32. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which

are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.

36.Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

37.Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law.

38.We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law & Justice to take appropriate steps in the larger interest of the society."

8.In the present complaint, the respondent herein had narrated various incidents and allegations against the petitioners herein prior to her marriage which was conducted on 29.06.2015. The question that arises here is as to whether such incidents prior to the marriage could be termed as an act of 'Domestic Violence'.

9.Some of the provisions of the Protection of Women from Domestic Violence Act, 2005 (herein after referred to as 'DV

Act') which is of relevance for determining the issue are extracted hereunder for an easy reference:

Section 2(a): "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 act of domestic violence by the respondent;

Section 2(f): "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

Section 3: 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 injures 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.

Explanation I.—

For the purposes of this section,—

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the

aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy

by virtue of the domestic relationship including access to the shared household

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

10.As per the definition, in order to constitute a "Domestic Relationship", two persons ought to have lived together in a shared household. Admittedly, the respondent herein neither lived in a shared household with the first petitioner prior to her marriage on 29.06.2015 nor was she in a living relationship with him. As such, it cannot be said that prior to her marriage, she was in a domestic relationship with the first petitioner herein. In the absence of being in a domestic relationship with the first petitioner herein, it cannot be said that the respondent is an aggrieved person as defined under Section 2(a) of the DV Act. In order to fall under the definition of an 'aggrieved person', the concerned woman should have had, at any point of time, living with her husband or in-laws as the case may be. Since the respondent herein is not in a domestic relationship with the petitioners herein, she cannot be deemed to be an 'aggrieved person'. Section 12 of the DV Act enables an aggrieved person or any other person on her behalf to file an application seeking for the reliefs provided under the Act. In view of the fact that the respondent has complained of various incidents prior to her marriage, the complaint insofar as it relates to such averments which occurred prior to her marriage, does not give a cause of action to the respondent to invoke the provisions of the Domestic Violence Act. It would not be out of place to mention here that inspite of such averments, the respondent herein had chosen to condone the same and married the first petitioner on 29.06.2015.

11.In the light of the above observations, the averments with regard to the grievance of the respondent on such incidents post her marriage requires to be looked into. Even according to the respondent, she had lived with the first petitioner and her in-laws in a shared household from 16.09.2015 to November 2015. After November 2015, the respondent herein had been staying in her mother's house and had given birth to a child on 18.03.2016. During this period, the respondent does not seem to have any grievance against the first petitioner/husband. Even as per her

version in the complaint under the DV Act, the first petitioner was a proper person when he was away from his mother. He had accompanied the respondent herein during her doctor's visit, bought a cradle, dresses and many other items for the child. He had accompanied the respondent to the hospital prior to and after the child birth and had also stayed with her when she came back home. Insofar as the other incidents after the delivery of the child is concerned, the grievance of the respondent herein seems to be that the first petitioner should establish a separate matrimonial house and live away from his parents. In connection with this demand, various incidents have been alleged in the petition, all these incidents had occurred when either the respondent herein, or her mother had visited the petitioners' house. The complaint also indicates that the respondent, had chosen to live with the mother till her demand for a separate matrimonial house is met. It is in connection with this demand that various averments have been made. Even taking such averments at their face value, it cannot be said that such averments amounts to acts of Domestic Violence. The allegations alleged in the domestic relationship after the marriage of the respondent herein does not indicate that such incidents had harmed or injured or endangered the health, safety life, limb or well being of the respondent herein. As such, it cannot be said that these averments would constitute the acts of Domestic Violence. The respondent herein had referred to a stray incident dated 16.02.2016, wherein she had alleged of physical abuse by the first petitioner herein. In connection with this incident, the respondent herein had also given a complaint in CSR No.199 of 2016 before the All Women Police Station, Vepery, a copy of which is produced before this Court. On a perusal of the same, it is seen that the respondent herein had complained against the first petitioner herein stating that when she had sought for a separate matrimonial residence with the first petitioner, he had not given her food or a place to stay and had sent her, her child and mother out of their house. There is no whisper of any physical abuse in the complaint. If at all, the respondent herein was subjected to such physical abuse, she would have averred about it in the complaint. On the contrary, her grievance was that the first petitioner herein had not given her a separate matrimonial residence and sent her out of his house. Hence no credence can be given to the said incident dated 16.02.2016. Apart from this incident, the other allegations as against the petitioners herein cannot be deemed to be acts of Domestic Violence and as such, the respondent is not entitled to the relief sought for by her. When such is the case, it would not be appropriate to make the petitioners to undergo the ordeal of the proceedings in D.V.C.No.34 of 2016 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai.

12. In the result, the Criminal Original Petition is allowed.

Consequently, the proceedings in DVC.No.34 of 2016 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai stands quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

DP

To

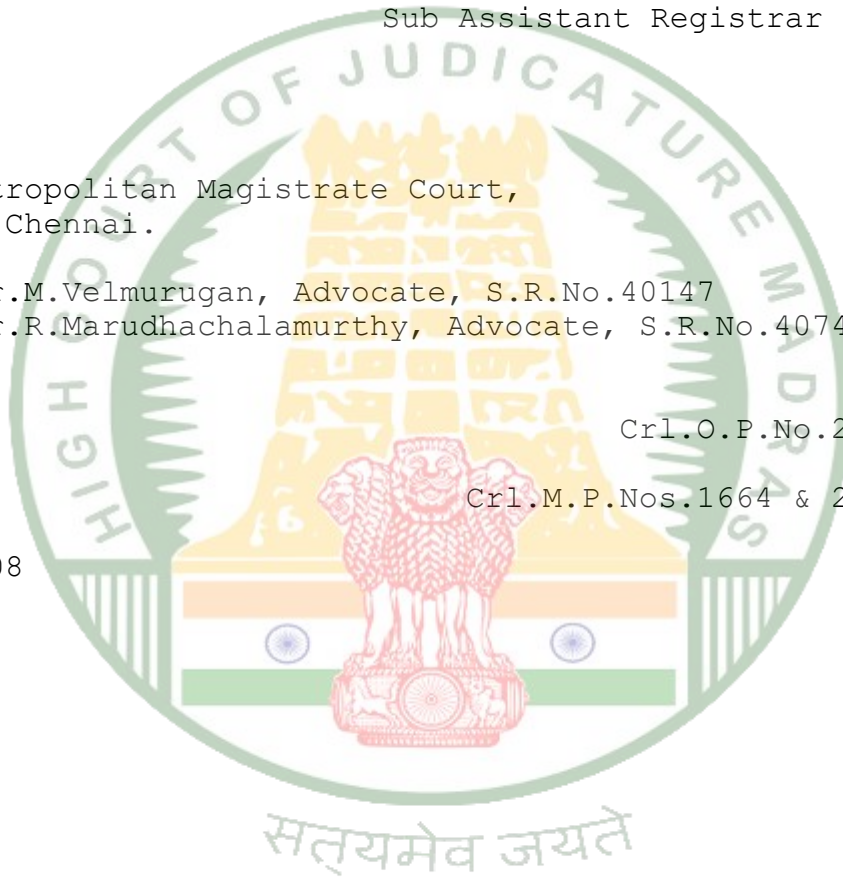
The IX Metropolitan Magistrate Court,
Saidapet, Chennai.

+1cc to Mr.M.Velmurugan, Advocate, S.R.No.40147

+1cc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.40745

Crl.O.P.No.2352 of 2017
and
Crl.M.P.Nos.1664 & 2849 of 2017

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