

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2018

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

Crl.O.P.Nos.30522 of 2012 and 293 of 2013
M.P.Nos.1 & 2 of 2012 and
M.P.Nos.1 & 2 of 2013

1. Saravanakumar Chowdry
2. Sadasivam
3. Kathurkamavalli
4. Sharmila Tagore
5. Kumar
6. Chandra

... Petitioners
in Crl.O.P.No.30522 of 2012

1. V.Vallarasi
2. V.V.Rajendran
3. Gunamani

... Petitioners
in Crl.O.P.No.293 of 2013

Vs.

Subha

... Respondent in both Crl.O.Ps.

PRAYER: Criminal Original Petitions filed under Sections 482 of Cr.P.C, to call for the records in M.C.No.74 of 2012 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai, and to quash the same.

For Petitioners in
both Crl.O.Ps. : Mr.K.Sakthivel

For Respondent in
both Crl.O.Ps. : Mr.V.S.Rajaram

COMMON ORDER

The petitioners are the respondents in M.C.No.74 of 2012, before the IX Metropolitan Magistrate Court, Saidapet, Chennai.

2. The respondent/complainant filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005, against the present petitioners as well as one Mrs.Vallarasi and the parents of the said Mrs.Vallarasi, seeking reliefs under Sections 18, 19, 20, 21 and 22 of the Protection of Women from Domestic Violence Act, 2005. The learned IX Metropolitan Magistrate, Saidapet, Chennai, took cognizance of the aforesaid offences and issued summons to all the respondents in M.C.No.74 of 2012.

3. In the present petition, it is alleged by the petitioners that the respondent/complainant cannot maintain the petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against them, since they did not live with the respondent/complainant and her husband at any point of time. It is further contended that the IX Metropolitan Magistrate, Saidapet, Chennai, before taking cognizance of the offences did not call for any Domestic Incident Report from the Protection Officer or Service Provider, and therefore, the entire proceedings in M.C.No.74 of 2012 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai, is liable to be quashed.

4. Mr.K.Sakthivel, the learned counsel for the petitioners, would contend that since the 1st petitioner and the respondent/complainant were residing at No.26, Old Mahabalipuram Road, Ramalinga Nagar, Kottivakkam, Chennai - 600 041, right from their marriage and were not living with the other petitioners, the petitioners 2 to 6 would not come within the definition of Section 2(f) of the Protection of Women from Domestic Violence Act, 2005.

5. At this juncture, it is relevant to refer the relevant Section 2(f) of the Protection of Women from Domestic Violence Act, 2005, which reads as follows:-

2(f) "Domestic relationship" means 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."

6. The learned counsel appearing for the petitioners, also relied on the decision in Shakunthala vs. Chaitra, reported in CDJ Law Journal in CDJ 2016 Kar HC 510, wherein, it has been held that in order to maintain an application under Section 12

of the Protection of Women from Domestic Violence Act, 2005, what is required to be brought to the notice of the Magistrate is the particulars of relationship, as defined under Section 2 (f) of the Act and the domestic violence, in terms of Section 3 of the Act, committed by the accused.

7. Even, according to the allegations made by the respondent/ complainant in the private complaint in MC.No.74/2012, the petitioners 2 to 5 were living in Mannargudi, whereas, she (complainant) and her husband were living in Chennai. No where in the complaint, it is mentioned that the petitioners 2 to 6 were living in a shared household with the respondent/complainant and her husband (first petitioner) and therefore, the proceedings as far as the petitioners 2 to 6 are concerned, are liable to be quashed. As far as the allegation that the learned IX Metropolitan Magistrate, Saidapet, did not call for Domestic Incident Report (DIR) from the Protection Officer or Service Provider concerned, it is to be noted that Section 12 of the Protection of Women from Domestic Violence Act, does not make it incumbent upon the Magistrate to call for Domestic Incident Report (DIR) from Protection Officer or Service Provider before taking cognizance of the offence. What is required is that the Magistrate should consider DIR only if, it is available in the records. Therefore, the learned Magistrate is right in taking cognizance of the offence as far as the first petitioner is concerned.

8. However, the IX Metropolitan Magistrate, Saidapet, Chennai, is directed to proceed against the 1st petitioner herein and dispose of the case in M.C.No.74 of 2012 within a period of three months from the date of receipt of a copy of this order.

9. With the above observations, the present petition is partly allowed and the proceedings in M.C.No.74 of 2012 is quashed, as far as the petitioners 2 to 6 are concerned. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

dna

To

The IX Metropolitan Magistrate,
Saidapet, Chennai.

+1cc to Mr.K.Sakthivel and Ravanam, Advocate, S.R.No.51278& 51279

+1cc to Mr.K.Sakthivel and Ravanam, Advocate, S.R.No.51278&
51279(18/09/2018)

+1cc to Mr.V.S.Raja Ram, Advocate, S.R.No.51555 & 51556

+1cc to Mr.V.S.Raja Ram, Advocate, S.R.No.51555 & 51556
(17/09/2018)

CrI.O.P.Nos.30522 of 2012 &
293 of 2013
M.P.Nos.1 & 2 of 2012 and
M.P.Nos.1 & 2 of 2013

GSP (06/09/2018)



WEB COPY