

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Crl.O.P.No.27724 of 2011
and
M.P.Nos.1 and 2 of 2011

1.Almalick Faizal
2.Haj Mohammed
3.Fareetha Beevi

... Petitioners

vs

1.Sameera Begum

2.The Protection Officer,
Domestic Violation Act,
District Social Welfare Office,
Chennai - 600 001.

... Respondents

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.2842 of 2011 on the file of the Metropolitan Magistrate-II, Egmore, Chennai and quash the entire proceedings against the petitioners.

For Petitioners : Mr.V.Jeevagiridharan

For Respondents : Mr.R.Udayakumar

ORDER

The petitioner has come forward with this petition to call for the records in C.C.No.2842 of 2011 on the file of the learned Metropolitan Magistrate-II, Egmore, Chennai and quash the entire proceedings against the petitioners.

2. Briefly stated, the case of the petitioners is as follows:

(i) The petitioners 2 and 3 are the parents of the first petitioner and though they were originate from India, they became citizens of Singapore and are living permanently at

Singapore. The first respondent was ex-wife of the first petitioner. The first respondent is a native of Thirupananthal, Tanjore District, but she was a Non-Resident Indian and permanently residing at Al Ain in United Arab Emirates (UAE) with her parents.

(ii) The first petitioner and the first respondent got married on 02.07.2009 as per the Islamic Shariath and customs at Sendamangalam, Nagai District. The petitioners and the first respondent came down to India for the purpose of marriage and after the marriage, they celebrated their honey moon for about 10 days at Mayiladuthurai. Thereafter, the first respondent left her husband and went to Al Ain, UAE with her parents. She never came back to her husband.

(iii) Despite asking the first respondent to come and live with the first petitioner at Singapore, she refused to come and efforts taken by the petitioners ended in vain. Subsequently, the petitioners came to know through their relatives that the first respondent gave birth to a female child at Kumbakonam on 16.04.2010.

(iv) Since all his efforts to pacify the first respondent to live with him became ended in vain, the first petitioner sent a petition to Sendamangalam Jamaath to intervene in the domestic dispute and resolve the same. Though, the first respondent initially agreed for settlement arrived at Sendamangalam Jamaath, later she refused to adhere to the settlement. Having failed in all his attempts to live with the first respondent, the first petitioner pronounced Triple Talaq as per Shariat law on 03.07.2011 and sent communication to his Jamaath to serve the same on the first respondent's Jamaath.

(v) On knowing that the first petitioner pronounced Triple Talaq, the first respondent rushed to Chennai and gave a petition to the second respondent on 07.07.2011 making false allegations against the petitioners.

(vi) Meanwhile, suppressing the petition submitted before second respondent, the first respondent filed a petition in MSS 4757 of 2011 on the file of the Subordinate Courts of the Republic of Singapore seeking maintenance for herself and her child and also pre and postal natal expenses. In the proceedings initiated by the first respondent in Singapore Court, the first petitioner appeared twice.

(vii) While things stood thus, the second respondent on behalf of the first respondent, presented petition against the petitioners under Section 12(1) of the Protection of Women from Domestic Violence Act, 2004 for reliefs under Sections 18, 19,

20, 21 and 22 of the said Act in C.C.No.2842 of 2011 and the petitioners have also served summons to appear on 14.12.2011 before the Metropolitan Magistrate-II, Chennai.

3. Resisting the petition, the first respondent filed counter stating that the first respondent was not a NRI permanently residing in Alain in UAE with her parents. The first respondent admits that she got married to the first petitioner on 02.07.2009 at Sendamangalam, Nagai District. According to the first respondent, the first petitioner spent the initial ten days with the first respondent and later when her father was eager to invite the first petitioner to his place at Alian, UAE to introduce him to friends and well wishers of first respondent's father, the first petitioner turned down the request at the instance of the petitioners 2 and 3.

4. According to the first respondent, during short stay at Mayiladuthurai, the petitioners made unreasonable demands tantamounting to dowry harassment, one such harassment was the third respondent insisted the first respondent's parents to distribute a special sweet in stainless steel tiffin box to 650 of their relatives. It is stated that the alleged letter to the Jamaath and the decision of the Jamaath are all concocted. It is also stated that the first petitioner was in the process of contracting a second marriage suppressing the first marriage with the first respondent and she had given a protest letter to the Registry of Marriages at Singapore on 18.07.2011. The Triple Talaq alleged by the petitioners was a false one.

5. I heard Mr.V.Jeevagiridharan, learned counsel appearing for the petitioner and Mr.R.Udayakumar, learned counsel appearing for the first respondent and also perused the materials available on record.

6. The learned counsel for the petitioners submitted that after solemnisation of the marriage between the first petitioner and the first respondent, the spouses were living together for about ten days at Mayiladuthurai and thereafter, the first respondent left her husband and was living with her parents at Alain, UAE. Since the first respondent had not returned to live with the first petitioner, the matter was mediated, but the same ended in vain. He submitted that the first respondent filed petition before the Subordinate Courts of The Republic of Singapore seeking maintenance and the same was pending and the initiation of the proceedings under the provisions of the Domestic Violence Act is untenable.

7. Per contra, the learned counsel appearing for the first respondent submitted that since the first respondent was insulted, abused and humiliated by the petitioners, she was

lodged a petition before the second respondent and the second respondent had jurisdiction to initiate proceedings against the petitioners. Therefore, the case in C.C.No.2842 of 2011 initiated against the petitioners was well maintainable and the petitioners have not right to seek quashing of the proceedings.

8. It appears that the first respondent has not stated anything in her counter qua the petition filed before the Subordinate Courts of The Republic of Singapore seeking maintenance to herself and her daughter.

9. On a perusal of the counter filed by the first respondent, it is seen that the first respondent has not stated anything about the filing of petition before the Subordinate Courts of The Republic of Singapore. In the said petition, the first respondent mentioned her address as C/o 132A, Changi Road, Singapore-419 719.

10. The learned counsel for the petitioners mainly contended since the petitioners are citizens of Singapore and failure on the part of the first respondent disclosing anything about the filing of maintenance petition before the Subordinate Courts of Singapore, the first respondent is not entitled to maintain proceedings under the Domestic Violence Act before the Metropolitan Magistrate Court, Chennai.

11. It is seen from the records and as per the case of both sides, the first respondent is the wife of the first petitioner. It is admitted that at the time of the marriage, the petitioners came to India from Singapore for the purpose of the marriage of the first petitioner with the first respondent. However, it is disputed by the parties as to the living together in Tamil Nadu.

12. As per Section 27 of the Domestic Violence Act, the first respondent is entitled to initiate proceedings, since even the temporary place of residence of the wife would also fetch jurisdiction of the concerned Court. Section 27 of the Act reads as under:

"Jurisdiction:- (1) The Court of Judicial Magistrate of the first Class or the Metropolitan Magistrate, as the case may be, within the local limits of which -

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try

offences under this Act.”

13.As per the above provision under Section 27 of the Domestic Violence Act, it made clear that the Court of the Judicial Magistrate of the first Class or the Metropolitan Magistrate, the local limits of which the person aggrieved permanently or temporarily resides, the cause of action has arisen, shall be the competent Court to grant a protection order and other orders and to try offences under this Act.

14.Admittedly, the first respondent has initiated the proceedings before the Subordinate Courts of the Republic of Singapore, but parallelly she is also given the above complaint before the learned Metropolitan Magistrate No.II, Egmore, Chennai, which was taken on file in C.C.No.2842 of 2011 which is not at all maintainable before the learned Metropolitan Magistrate No.II, Egmore, Chennai.

15.Admittedly, the first respondent/wife has already initiating the proceedings before the learned Subordinate Courts of the Republic of Singapore, therefore, it is totally barred to the first respondent to initiate the very same proceedings before the Court in which knows cause of action was arisen since it was alleged by the first respondent that while both the petitioners and the first respondent were lived in Singapore and the alleged occurrence was took place, the first respondent is not entitled to maintain the proceedings under the Domestic of Violence Act before the learned Metropolitan Magistrate No.II, Egmore, Chennai.

16.As per the facts of the case of the petitioners and the first respondent, both of them were totally disputed about the living together in Tamilnadu, because the petitioner arrived from Singapore for the purpose of the marriage, the cause of action would not arose for filing the complaint, since it is disputed by the parties that both of them were residing at Singapore and alleged occurrence taken place only at Singapore.

17.Thus being the case, the complaint filed by the first respondent in C.C.No.2842 of 2011, on the file of the learned Metropolitan Magistrate No.II, Egmore, Chennai, is not at all maintainable before this Court. Accordingly, it is liable to be set aside.

18.In the result:

(a) this Criminal Original Petition is allowed;

(b) the case pending in C.C.No.2842 of 2011 on the file of the learned Metropolitan Magistrate

No.II, Egmore, Chennai, is quashed. No costs.
Consequently, connected miscellaneous petitions are
closed.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

vs

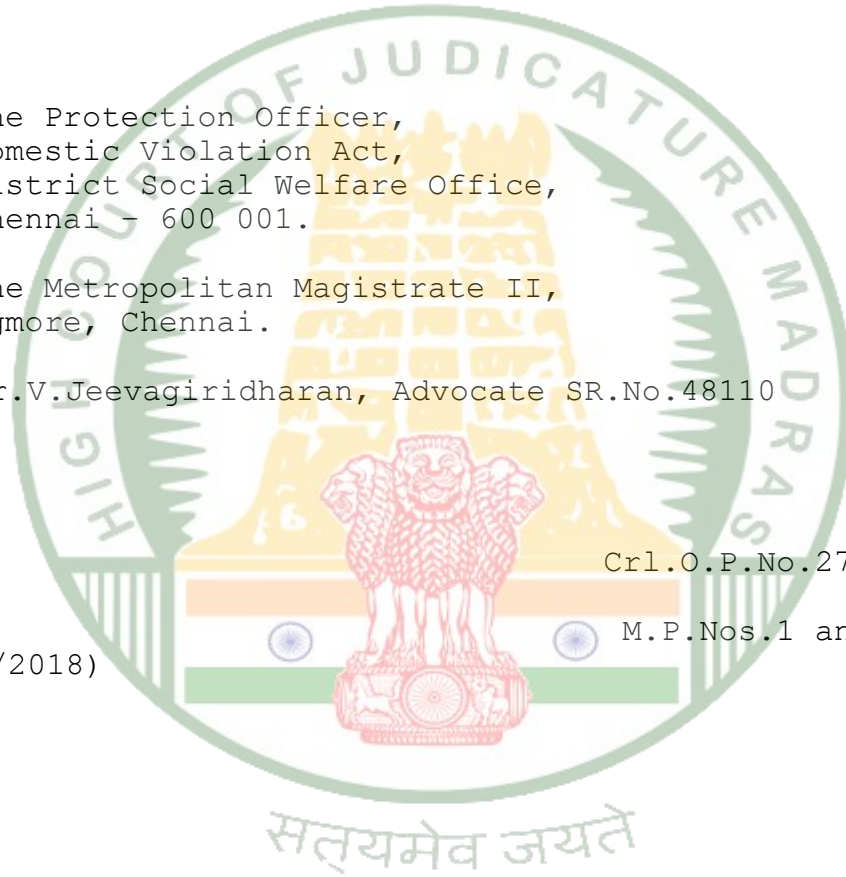
To

1. The Protection Officer,
Domestic Violation Act,
District Social Welfare Office,
Chennai - 600 001.
2. The Metropolitan Magistrate II,
Egmore, Chennai.

+1cc to Mr.V.Jeevagiridharan, Advocate SR.No.48110

Crl.O.P.No.27724 of 2011
and
M.P.Nos.1 and 2 of 2011

GMV (08/10/2018)



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