

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Reserved on : 06.03.2018)

(Pronounced on :11.06.2018)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.O.P.No.21900 of 2010
and
M.P.Nos.1 and 2 of 2010

1.Anand Kalyana Sundaram
2.Nalini Kalyana Sundaram
3.Mrs.Swathi
4. Mrs.Vishalakshmi Petitioners/Accused

... Vs ...

Harina Lakshmi ...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the case in C.M.P.No.10 of 2010 on the file of learned XVII Metropolitan Magistrate,Saidapet, Chennai and quash the same.

For Petitioners : Mr.R.Vasudevan

For Respondent : Mr.D.S.Ramesh

ORDER

This criminal original petition is filed under Section 482 of Cr.P.C., to call for the records in C.M.P.No.10 of 2010 pending on the file of learned XVII Metropolitan Magistrate,Saidapet, Chennai

2. The brief facts which are necessary for determination of the case, are as follows:-

[i] The second petitioner Nalini (A2) is the mother of the first petitioner, the 3rd petitioner Swathi (A3) is sister, and the 4th petitioner Vishalakshmi (A4) is grand-mother. The first petitioner was married to Harina Lakshmi on 05.06.2009 at Kanchipuram and after the marriage, matrimonial home was put up at Virugambakkam, Chennai. He worked as Software Engineer at

Bangalore, and thereafter he was transferred from Bangalore to Chennai. The respondent had filed case against his mother, his sister and his grand mother under the Domestic Violence Act, 2005 under Sections 12, 18, 19, 20, 22 and 23 and the same is pending before learned XVIII Metropolitan Magistrate Court, Saidapet, Chennai is in C.M.P.No.10 of 2010.

3. The learned counsel for the petitioners has submitted that from the beginning of the marriage, the respondent was not interested in the marital life and the respondent very often did not inform to petitioners family and she went to her parents house and stayed with parents. Therefore, the 1st petitioner and respondent were having contradictory views in every walk of life. Though the respondent-complainant is exhibiting various allegations against him, however, only for the purpose of harassing, the entire family was implicated in this case. The respondent had filed this false case against all of the petitioner before the XVII Metropolitan Magistrate, Saidapet, who is having no jurisdiction at all and based on complaint, the Magistrate issued summons to the petitioners. The learned XVII Metropolitan Magistrate Saidapet, took cognizance of the case without having jurisdiction to try the case, since none of the allege acts, namely demand of dowry and harassment comes under the said Magistrate's jurisdiction. He further states that after the marriage, the matrimonial home was put up at Virugambakkam and thereafter, the 1st petitioner and respondent put up separate house in the same building of first floor and 2nd, 3rd and 4th petitioners were living separately and the entire house property belongs to the daughter-in-law of the 4th petitioner. So, the respondent wife cannot claim a right to share the household against the second petitioner, third petitioner and fourth petitioner. Therefore, the second petitioner, third petitioner and fourth petitioner were implicated in the case for the purpose of harassing the entire family and he seeks to allow this petition.

4. The learned counsel for the respondent has submitted that the respondent filed a case under the Domestic Violence Act as against the petitioners in C.M.P.No.10 of 2010 and sought relief under Sections 12, 18, 19, 20, 22 and 23 of the Act before the learned XV Metropolitan Magistrate, Saidapet.

5. After hearing both the parties, it is seen that the solemnization of marriage between the first petitioner and the respondent was on 5.6.2009 at Kancheepuram and after sometime, matrimonial home was set up at Saidapet, Chennai, which are not in dispute.

6. Due to the misunderstanding between the first petitioner and the respondent, the first petitioner-husband filed O.P.No.1916 of 2010 for divorce, while the wife has filed the H.M.O.P.No.19 of 2006 for restitution of conjugal rights and there are multiple matrimonial proceedings between the parties. There are allegations and counter allegations.

7. The present application is filed under Section 32 of the Domestic Violence Act before the XVII Metropolitan Magistrate Court, Saidapet seeking the relief of shelter under the provisions of the Act by committing the Domestic Violence Act and return of articles and also for interim maintenance.

8. Aggrieved against the same, the husband and in-laws have preferred this Criminal Original Petition under Section 482 of Cr.P.C for quashment.

9. Upon perusing the grounds of petition as well as by hearing the learned counsel for the petitioners who contended that similar allegations have been made against them for the offence under Section 498(A) of Cr.P.C and the said complaint has already been closed and therefore, this petition is not maintainable.

10. Per contra, the learned counsel for the respondent would contend that the complaint under the Domestic Violence Act is maintainable on the proceedings of the case as stated in the complaint.

11. After hearing both the parties and perusing the typed set of papers, the factum of solemnization of marriage is admitted and there is misunderstanding between the husband and wife, which resulted in filing of the two H.M.O.Ps before the Family Court.

12. After going through the records and also the averments made in the complaint filed under Section 12 of Domestic Violence Act, I find that the same is maintainable and as such, in view of the various matrimonial disputes pending between the parties in different forum, I am not inclined to deal with the issue at this stage. Taking into consideration the scope of the quashment petition, it is seen that the averments and the counter averments are to be proved in the manner known to law during the course of evidence at the time of the trial.

13. Accordingly, I find that the contention raised by the petitioners herein cannot be gone into in the petition for quashment. Hence, this Criminal Original petition is dismissed. Taking note of the fact that petitioner 2, 3 and 4 are in-laws and members of the family, their personal appearance before the Metropolitan Magistrate is hereby dispensed with, unless it is warranted. The learned trial Magistrate is directed to dispose of the case within a period of four months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nvi

To

The XVII Metropolitan Magistrate,
Saidapet, Chennai.

+1cc to M/S.R.Vasudevan, Advocate Sr.36115
+1cc to M/S.D.S.Ramesh, Advocate Sr.36510

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srg 26/06/2018

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