

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2018

DELIVERED ON: 11.07.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.286 of 2014

and

Crl.M.P.Nos.1 of 2014

1. Gandhimathi

2. Usha

.... Petitioners

Vs.

Devi

.... Respondent

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C to quash the proceedings in M.C.No.18 of 2013 on the file of the Judicial Magistrate-II, Tindivanam.

For Petitioners : M/s Sai Bharath and Ilan
For Respondent : Mr.G.Pugalenth

ORDER

The petitioners have filed the present petition to quash the proceedings in M.C.No.18 of 2013, on the file of the Judicial Magistrate-II, Tindivanam.

2. The petitioners are arrayed as respondents 2 and 3 in M.C.No.18 of 2013 on the file of the Judicial Magistrate-II, Tindivanam. They are mother-in-law and sister-in-law of the respondent.

3. The respondent/complainant filed a petition in M.C.No.18 of 2013 before the Judicial Magistrate-II, Tindivanam against her husband as well as the present petitioners under Section 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005. Her contention is that all the accused demanded dowry from her, beat her and also tortured her both physically and mentally. It is also her contention that her husband wanted to take full video coverage of their first

night to show the same to his friends and that the 2nd and 3rd petitioners insisted the respondent to co-operate with her husband in this regard.

4. In the present petition, the petitioners have alleged that the marriage between the respondent/complainant and her husband was solemnized on 23.08.2012 at Samikkannu Dhanammal Thirumana Mandapam, Ariyankuppam, Puducherry. According to them, the marriage was not consummated till date, since the respondent/complainant had a love affair with some other person before her marriage. It is their further contention that since the respondent/complainant left the matrimonial home, her husband, the first accused lodged a complaint with the Inspector of Police, Ariyankuppam Police Station on 15.03.2013 and that the said Inspector of Police advised the respondent to live with her husband. However, the respondent refused to live with her husband, but filed a false petition in M.C.No.18 of 2013 before the Judicial Magistrate-II, Tindivanam alleging that the respondents tortured her and also demanded dowry from her.

5. Mr. Sai Barath, learned counsel appearing for the petitioners would contend that the proceedings in M.C.No.18 of 2013 on the file of the Judicial Magistrate-II, Tindivanam is liable to be quashed on the following grounds.

[1] The Magistrate cannot issue summons directly to the petitioners, as per Section 12 of the the Protection of Women from Domestic Violence Act, 2005 and he should have sent the petition to protection officer or the service provider for enquiry.

[2] The Magistrate can pass orders only after receiving report from the Protection Officer or the service provider.

[3] Summons should also to be served only by the Protection Officer, as per Section 13 of the Protection of Women from Domestic Violence Act, 2005.

[4] The petitioner had also suppressed the complaint lodged by her husband and therefore, has not approached the Judicial Magistrate-II, Tindivanam, with clean hands.

6. The basic objective in enacting the Protection of Women from Domestic Violence Act, 2005 is to secure various rights to a woman living in matrimony or in any domestic relationship. The primordial submission made by the learned counsel appearing for the petitioners is that the Magistrate

should not issue summons to the accused directly, without getting Domestic Incident Report (DIF) either from the Protection Officer or from Service Provider. It is relevant to extract Section 12 of the the Protection of Women from Domestic Violence Act, 2005

Section 12. Application to Magistrate

(1) An Aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

[2] The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

[3] Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

[4] The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the Court.

5. The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

7. It is noteworthy that Section 12(1) does not mandate that an application seeking relief under the Act be accompanied with the DIR or even that it should be moved by a protection officer. Even Rule 6 which stipulate the form and manner of

making application to the Magistrate does not require that the Domestic Incident Report (DIR) must accompany an application for relief made under Section 12 of the Act. It is only the proviso to Section 12 of the Protection of Women from Domestic Violence Act, 2005, which mandate that the Magistrate shall consider the DIR received by him from the Protection Officer or the Service Prover. No obligation to call for Domestic Incident Report (DIR) has been imposed upon the Magistrate. Since the petition is filed before the Magistrate under Section 12 of the Act, the Magistrate is empowered to issue summons to the respondents and I do not see any error in that. Merely because the complaint lodged by the husband of the petitioner was not mentioned in the petition in M.C.No.18 of 2013, on the file of the Judicial Magistrate No.2, Tindivanam, the entire proceedings cannot be quashed, especially when the complaint of the petitioner is not germane to the issue involved in the complaint preferred by the de-facto complainant under Section 12 of the Act. Therefore, I do not find any reason to quash the proceedings in M.C.No.18 of 2013 on the file of the Judicial Magistrate-II, Tindivanam.

8. In the result, this Criminal Original Petition is dismissed. Consequently, connected criminal miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Judicial Magistrate-II,
Tindivanam

2. The Public Prosecutor,
Madras High Court.

+1cc to Mr.G.Pugazhenthii, Advocate, S.R.No.45555.
+1cc to Mr.Sai Bharath, Advocate, S.R.No.45515

Cr.O.P.No.286 of 2014

BR (CO)
BM 26/07/2018