

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.08.2018
Pronounced on : 03.08.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.22773 of 2010

and

M.P.No.1 of 2010

1.Magendra Kumar,
S/o.P.K.Nadarajan.

2.Pappathi @ Angathal,
W/o.P.K.Nadarajan.

... Petitioners

Vs.

Abirami,
W/o.N.Mahendrakumar

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings in pursuance of the cognizance offence taken by the trial Court in C.M.P.No.1984 of 2010 on the file of the Judicial Magistrate Court No.VII, Coimbatore.

For Petitioners : Mr.C.Deivasigamani

For Respondent : Mr.A.Panneer Selvam for
Mr.S.Gunalan

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O R D E R

This Criminal Original Petition is filed to call for the records and quash the proceedings in pursuance of the cognizance offence taken by the trial Court in C.M.P.No.1984 of 2010 on the file of the Judicial Magistrate Court No.VII, Coimbatore.

2.The petitioners herein, who are the respondents in a case filed under Domestic Violence Act by the respondent/complainant, which is pending trial in

C.M.P.No.1984 of 2010 on the file of the Judicial Magistrate Court No.VII, Coimbatore has filed the above said quash petition.

3.The contention of the learned counsel for the petitioners is that the respondent has not filed the application under Section 12 of the Domestic Violence Act as contemplated under Section 12(3) of the Act and the Lower Court has not complied Section 12(4) and (5) of the Act. No notice has been served to the Probation Officer under Section 13(1) and (2) of the Act and Rules 12 of the Protection of Women from Domestic Violence Rules, 2006 and no mandatory provision has been complied with and the Magistrate had taken cognizance of the complaint under Domestic Violence Act and hence prayed to quash the proceedings.

4.The learned counsel for the petitioners further contended that all the mandatory provisions have been complied with and filing a complaint directly to the Magistrate concerned, without approaching the Probation Officer is not bad in law and the complaint is maintainable. In support of the same, he had relied upon the citation of the Allahabad High Court reported in CDJ 2007 All HC 122 in the case of Milan Kumar Singh and another Versus State of Uttar Pradesh and another, wherein it has been held that the aggrieved person can file the complaint directly to the Magistrate concerned and it is the choice of the aggrieved person that instead of directly approaching the Magistrate, he or she can approach the Protection Officer seeking relief under the Domestic Violence Act. Hence, the filing of the complaint before the Magistrate is in order and prayed that the quash petition is to be dismissed.

5.The learned counsel for the petitioners further contended that the marriage between the first petitioner and the respondent had taken place on 12.12.1990 and it was an arranged marriage. After the marriage for about 4 ½ years, the first petitioner and the respondent were residing along with the second petitioner as a joint family and at that time, she was leading a happy marriage life. After a period, the first petitioner due to his bad company had not looked after his business properly and had taken into drinks under the influence of alcohol, he used to abuse the respondent and by not taking care of the business properly he had sustained a loss.

6.Thereafter, for the past five years on the advice of the parents of the first petitioner and the respondent, the first petitioner and the respondent had set-up an independent resident at Chetipalayam and the

first petitioner was carrying of the repair work of Television sets along with the respondent's brother. Subsequent to this, again the first petitioner had taken into drinks and continued to abuse the respondent and the respondent had lost her peace and she was subjected to cruelty and she had led the life of sufferings for the past 18 years. He further submitted that there is no allegation and averments with regard to the second petitioner in the entire complaint.

7.This being the case, the first petitioner had developed an illegal intimacy with another lady, when the same was questioned by the respondent, she was physically assaulted by the first petitioner. Thereafter, she had given a complaint on 27.09.2008 to the Inspector of Police, All Women Police Station, Pothanur, who had given a C.S.R.No.175 of 2008. During the enquiry, the first petitioner had confirmed and reiterated that he will continue the relationship with the lady and without informing anybody he had left to Pollachi. Thereafter, on 13.10.2008, the first petitioner had caused notice seeking divorce from the respondent and thereby, the respondent in seeking protection order, residential order and monetary relief from the first petitioner.

8.The learned counsel for the petitioners submitted that the entire allegation taken as a whole filed by the respondent. In the complaint, it could be seen that it is a motivated complaint and all the happenings are imaginary made for the purpose of the case.

9.This Court on hearing both the petitioners and respondent finds that the complaint filed under Domestic Violence Act before the Magistrate is maintainable. Further, looking at the complaint in toto and on the submissions made, it is clear that there is no averments against the second petitioner, who is the mother-in-law of the respondent, who is of 77 years now and she had been arrayed as a respondent in the above case is manifestly attended with mala fide, which is maliciously instituted with an ulterior motive for wrecking vengeance. Thus, the case against the second petitioner alone is to be quashed.

10.With regard to the first petitioner, the first petitioner being the husband of the respondent and there are specific allegation about his relationship with another lady and not taking proper care of the respondent, which is to be decided only at the time of the trial. In view of the above, the Criminal Original Petition as against the first petitioner is dismissed and the second petitioner is quashed.

11. Accordingly, the Criminal Original Petition is partly allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

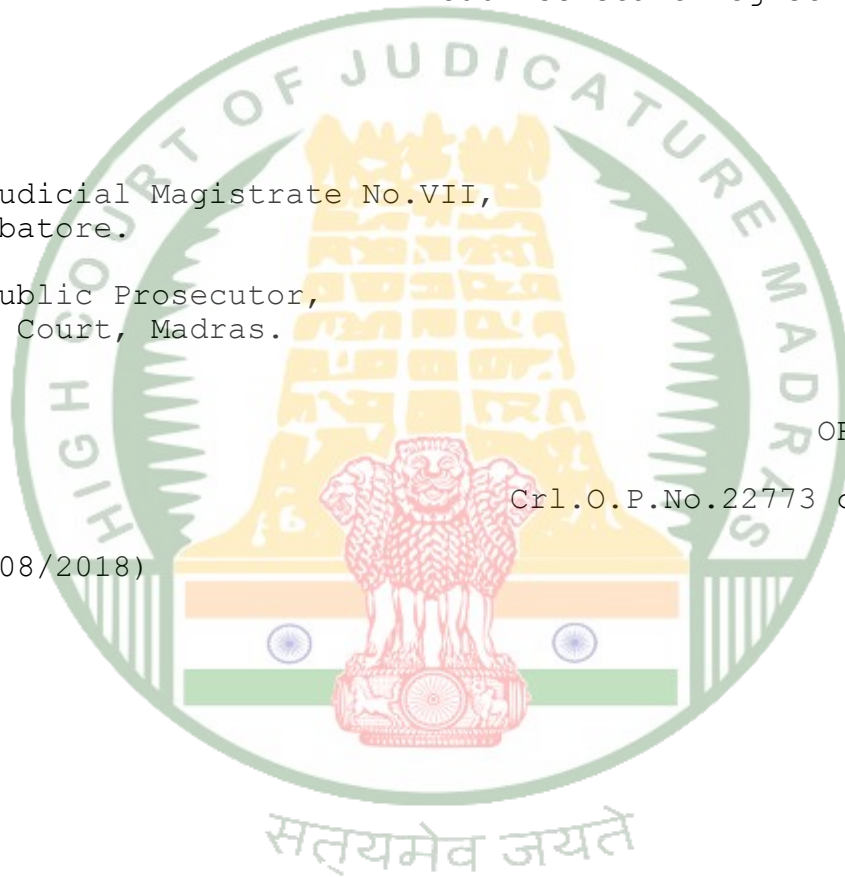
1. The Judicial Magistrate No. VII,
Coimbatore.

2. The Public Prosecutor,
High Court, Madras.

ORDER IN

CrI.O.P.No.22773 of 2010

ASK(16/08/2018)



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