

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2018

CORAM

THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

CRL.O.P.No.31534 of 2013

and

M.P.No.1 and 2 of 2013

1.Gopinath

2.Panjamoorthy

3.Leelavathy

4.Umadevi

5.Sivakumar

... Petitioners

Kalaimathi

Vs

... Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records and quash the complaint and proceedings in CM.P.No.5264 of 2013 on the file of the Judicial Magistrate, Sirkazhi.

For Petitioners : Mr.K.Kumaraguru
for M/s.Sai Bharath & Ilan

For Respondent : No Appearance

सत्यमेव जयते

O R D E R

The petitioners are the respondents in CC.No.5264 of 2013 on the file of the Judicial Magistrate, Sirkazhi. The respondent/complainant had filed a private complaint under section 12 of the Protection of Women from Domestic Violence Act 2005 against the petitioners. She has prayed for necessary orders under sections 18,19,20 and 22 of Protection of Women from Domestic Violence Act 2005.

2. In the present petition, the petitioners have contented that the complaint filed by the respondent/complainant is abuse

of process of law and is that the Magistrate without obtaining a Domestic Incident Report(DIR) from the Protection officer, has straight away taken cognizance of the offence and therefore is liable to be quashed.

3.It is pertinent to point out that Section 12 of the Protection of Women from Domestic Violence Act 2005 directs the Magistrate to consider any Domestic Incident Report received from the Protection Officer or service provider before passing any order on the application filed by the complainant. However it is not incumbent upon the Magistrate to call for any Domestic Incident Report(DIR) before taking cognizance of the offence. If Domestic Incident Report(DIR) is not available, there is no impediment in law, on the part of an aggrieved person, to directly make an application to a Magistrate under Section 12 and if such an application is made, it need not necessarily be accompanied by a copy of the domestic incident report. Therefore CMP.No.5264 of 2013 on the file of the Judicial Magistrate, Sirkazhi, cannot be quashed on this ground.

4. Another ground raised by the petitioner is that since the respondent/complainant also filed a Divorce petition in H.M.O.P.No.135 of 2013 before the Subordinate Judge, Kumbakonam, she cannot maintain a petition filed under section 12 of Protection of Women from Domestic violence Act.

5.At this Juncture it is relevant to extract Section 2(f) of the Protection of Women from Domestic Violence Act :

"(f)"Domestic relationship" means a 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.Therefore merely because the respondent had filed a Divorce petition in H.M.O.P.No.135 of 2013, she cannot be produced from filing a complaint under the provisions of section 12 Protection of Women from Domestic Violence Act. Furthermore it is settled that even a divorced life is entitled to maintain a petition under the said Act. Therefore, I do not find any reason to allow this petition.

7.In the result petition is dismissed. Consequently,
connected miscellaneous petitioner are also closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

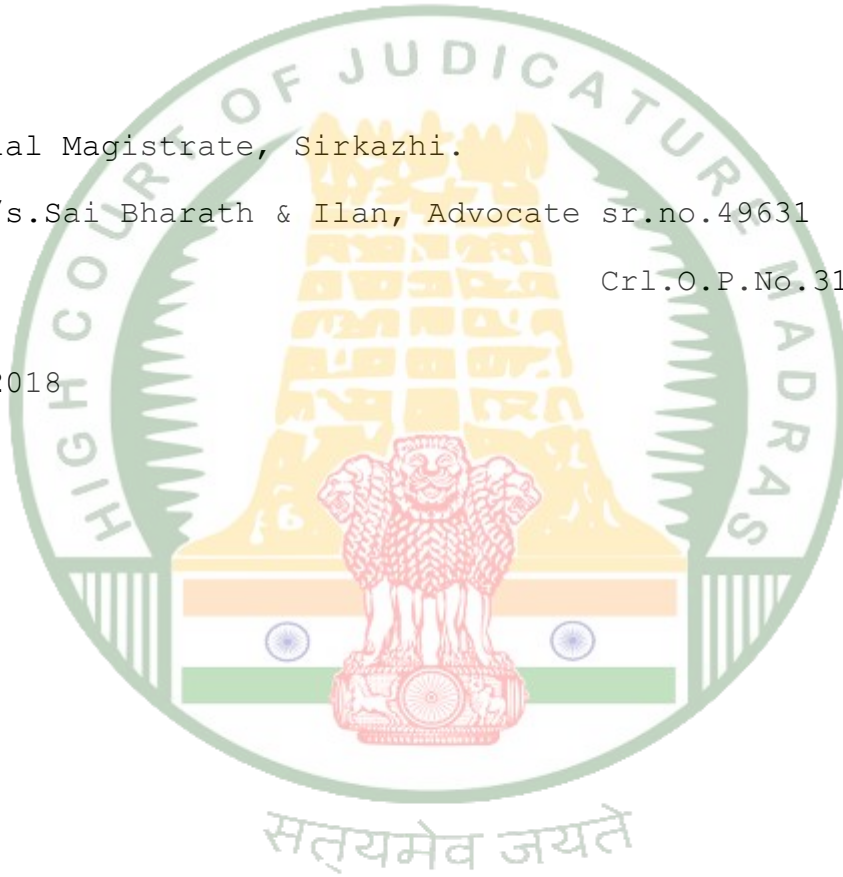
To

The Judicial Magistrate, Sirkazhi.

+1cc to M/s.Sai Bharath & Ilan, Advocate sr.no.49631

Crl.O.P.No.31534 of 2013

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nr 20/08/2018



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