

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.16641 of 2018

N.B.Riyas Ahmed

..Petitioner

Vs

1.L.M.D.Athiya Parveen
2.C.Fazal Khaan
3.Nazeer Begum

.. Respondents

Criminal Original Petition filed under Section 482 of Cr.P.C., praying for a direction to the trial Court to dispose of the application in C.M.P.No.2117 of 2017 in D.V.C.No.5 of 2017 pending on the file of the Judicial Magistrate, Gudiyatham within a stipulated time as fixed by this Hon'ble Court.

For Petitioner : Mr.B.Gurunathan

O R D E R

This petition has been filed seeking a direction to dispose of C.M.P.No.2117 of 2017 in D.V.C.No.5 of 2017 pending on the file of the Judicial Magistrate Court, Gudiyatham within a stipulated time.

2.Athiya Parveen [1st respondent herein] has initiated proceedings under Domestic Violence Act in D.V.C.No.5 of 2017 before the Judicial Magistrate, Gudiyatham against the petitioner and others claiming various reliefs. On notice, the petitioner entered appearance and filed an application in C.M.P.No.2117 of 2017 in D.V.C.No.5 of 2017 to decide the following question :

"Under such circumstances, it is therefore prayed that this Hon'ble Court may be pleased to decide the question 'whether this D.V.C. is maintainable, when there is no cause action and existing domestic relationship as defined under the "Act" between the petitioners and the respondent?' as a preliminary issue pending disposal of the above D.V.C.No.5 of 2017 and thus render justice."

Since no orders have been passed in C.M.P.No.2117 of 2017, the petitioner is before this Court for a direction to the trial Court to pass appropriate orders in C.M.P.No.2117 of 2017.

3. Heard the learned counsel for the petitioner, who submitted that there is no matrimonial relationship between the petitioner and the 1st respondent and therefore, the very proceedings under the Domestic Violence Act cannot be maintained. In the opinion of this Court, for maintaining proceedings under the Domestic Violence Act, even a live-in relationship is sufficient and it is not necessary that there should be a matrimonial relationship.

4. That apart, unlike in the Code of Civil Procedure, where a plaint can be rejected, there are no provisions under the Code of Criminal Procedure to dismiss a petition by framing a preliminary issue. In criminal proceedings, issues are not framed and only charges are framed and that too, in the prosecution of an offender and not in matrimonial proceedings. Under such circumstances, this Court is indeed surprised as to how the Judicial Magistrate Gudiyatham entertained the petition filed by the petitioner and has numbered it as C.M.P.No.2117 of 2017. Hence, no directions as prayed for by the petitioner can be granted. The trial Court is directed to take up the main proceedings in D.V.C.No.5 of 2017 and proceed with the enquiry. The petitioner is directed to appear before the trial Court within two weeks from the date of receipt of a copy of this order and execute a bond under Section 88 of Cr.P.C. for Rs.5,000/- without sureties.

In the result, this petition is devoid of merits and dismissed.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

gya
To

The Judicial Magistrate,
Gudiyatham.

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SP(04/07/2018)