

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2018

CORAM

THE HONOURABLE MR.JUSTICE M.S. RAMESH

CrI.OP No.9696 of 2016

and

CrI.MP.Nos.5009 & 5010 of 2016

1.C.Bhoobalan

2.Gowri

3.Priya @ Gayathri

.... Petitioners

Versus

S.Menaka

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C, praying to call for the entire records in connection with the proceedings initiated in C.C.No.871 of 2015 on the file of the Metropolitan Magistrate - V, Egmore, Chennai and quash the same in so far as the petitioners are concerned.

For Petitioners : Mr.T.Baskar

For Respondent : Mr.N.Sudharsan

O R D E R

The prayer in the present Criminal Original Petition is seeking to call for the entire records in connection with the proceedings initiated in C.C.No.871 of 2015 on the file of the Metropolitan Magistrate - V, Egmore, Chennai and quash the same in so far as the petitioners are concerned.

2. The petitioners herein are the Father in-law, Mother in-law and Sister in-law of the respondent herein, who have been arrayed as respondents 2, 3 and 4 in the case filed under the Domestic Violence Act by the respondent herein.

3. The relief sought for in the impugned proceedings is for Protection order, under Section 18; Residential order, under Section 19(a); Monetary relief, under Section 20 (3) and 22 of the Domestic Violence Act, 2005.

4. Heard Mr.T.Baskar, learned counsel appearing for the petitioners as well as Mr.N.Sudharsan, learned counsel appearing for the respondent.

5. On a perusal of the averments made in the petition filed under the Domestic Violence Act, 2005, it is seen that the respondent's husband was impleaded as the first respondent therein, in the case filed under Domestic Violence Act. The only overt act attributed against these petitioners herein is that they had harassed the respondent herein by demanding a sum of Rs.5 lakhs (Rupees Five Lakhs only) as a pre-condition to permit her to continue with her Matrimonial life and that, at the time of her marriage on 19.11.2010, the respondents had demanded a sum of Rs.2 lakhs by way of cash and 30 Sovereigns of Gold Jewels along with Stridhana articles.

6. Apart from the above averments, there are no other averments implicating the petitioners herein of having indulged in acts of Domestic Violence. The moot question to be considered in the present petition is, as to whether the averments in the complaint against these petitioners can be construed as acts of Domestic Violence as defined under the Domestic Violence Act.

7. Section 3 of the Protection of Women from Domestic Violence Act, 2005, defines the term 'domestic violence' , which reads as follows:

"Definition of domestic violence:-

For the purpose of this Act, any act, omission or commission of conduct of the respondent shall constitute domestic violence in case it:

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economical abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I. - For the purpose of this section:-

(i) " physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved

person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "Verbal and emotional abuse" includes:-

a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes:-

a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II - For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration."

8. What is required to constitute act of Domestic Violence is that aggrieved person should be harmed or injured or harassed or otherwise put to danger to her life and liberty. The various forms of abuses have also been defined under Section 3 which includes physical, sexual, verbal, emotional and economic abuses. The averment made as against these petitioners herein is that they demanded 30 Sovereigns of Gold Jewels and Rs.2 lakhs cash along with the Stridhana articles which was given at the time of marriage on 19.11.2010. The further averment is that the petitioners herein, along with the respondent's husband had harassed the respondent demanding a further sum of Rs.5 lakhs to enable them to continue their Matrimonial life.

9. On a clear understanding of the definition of the Domestic Violence under Section 3 of the Domestic Violence Act, I do not find any overt acts attributed against these petitioners, which may constitute acts of physical, sexual, verbal or emotional abuses. All averments made against the respondent's husband may constitute these forms of abuses, which may be construed to be acts of Domestic Violence defined under the said Act, on the part of the respondent/husband.

10. Insofar as the economic abuse is concerned i.e., the demand of cash and gold jewels, it is seen that the overt acts attributed against these petitioners is in respect of an occurrence that took place in the year, 2010. The present complaint under the Domestic Violence Act has been made in the year, 2015. In view of the fact that the respondent herein had chosen to initiate the proceedings under Domestic Violence Act, after more than four years, the question that arises for consideration is as to whether the delay in approaching the Court, would entitle her to maintain the application under Section 12 or not?

11. In the above context, it would be relevant to refer to Section 28 and Section 32 of the Domestic Violence Act, 2005 which read as follows: सत्यमेव जयते

"Section 28: Procedure: (1) Save as otherwise provided in this Act, all proceedings under Sections 12,18,19,20,21,22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

2) Nothing in Sub-section (1) shall prevent the Court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

Section 32: Cognizance and Proof: (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.

(2) Upon the sole testimony of the aggrieved person, the Court may conclude that an offence under sub-section (1) of section 31 has been committed by the accused."

12. On a conjoint reading of Sections 28 and 32 of the Domestic Violence Act, It is seen that the procedure to be adopted for dealing with an application under Section 12 of the Domestic Violence Act shall be governed by the provisions of the Code of Criminal Procedure. The Hon'ble Supreme Court of India had an occasion to consider this aspect in the case of Inderjit Singh Grewal Vs State of Punjab & Anr case reported in 12 SCC 588 [2011]. The relevant portion of the said order reads as follows:

"32. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 Cr.P.C, that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Sections 28 and 32 of the Act, 2005 read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006 which make the provisions of Cr.P.C applicable and stand fortified by the judgements of this Court in Japani Sahoo V. Chandra Sekhar Mohanty, and NOIDA Entrepreneurs Assn. V. NOIDA.

33. In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions of the 2005 Act is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the court. Undoubtedly, for quashing a complaint, the court has to take its contents on its face value and in case the same, discloses an offence, the court generally does not interfere with the same. However, in the backdrop of the factual matrix of this case, permitting the court to proceed with the complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same."

13. In the instant case, the allegations of Domestic Violence as against these petitioners herein are concerned are of the year 2010. In view of the aforesaid proposition laid down by the Hon'ble Supreme Court of India, such an occurrence that took place before one year from the date of the complaint under Section 12 of the Protection of Women Domestic Violence Act, 2005 will be barred by limitation. As such, the occurrences alleged in the complaint cannot be taken to be a cause of action for constituting acts of Domestic Violence.

14. In the result, the allegations in the complaint against these petitioners herein, who are in-laws, could be only termed to be an abuse of the process of law.

15. In the light of the above observations, I am of the view that the petitioners are entitled to succeed. Accordingly, the proceedings in C.C.No.871 of 2015, pending on the file of the Learned Metropolitan Magistrate, Egmore, Chennai, in so far as it relates to the petitioners herein, stands quashed and the Criminal Original Petition is allowed. Consequently connected miscellaneous petition are closed.

Sd/-

Assistant Registrar(Ccc)

//True Copy//

Sub Assistant Registrar

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TO

1. THE V METROPOLITAN MAGISTRATE, EGMORE, CHENNAI.

+1cc to Mr.N.SUDHARSAN, Advocate, S.R.No. 19562

Cr1.OP No.9696 of 2016

and

Cr1.MP.Nos.5009 & 5010 of 2016

CA(CO)
TR(24/04/2018)

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