



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD) .No.8297 of 2014

and

M.P. (MD) Nos.1 and 2 of 2014

1.Syed Ibrahimma
2.Shajahan
3.Iqpal

..Petitioners/Respondents 2 to 4

Vs.

1.Syed Ali Fathima
2.Minor Nazeer
3.Minor Kabeer

..Respondents/Petitioners

(Respondents 2 & 3 rep.by through
their mother and guardian the 1st
Respondent herein).

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records in M.C.No.10 of 2014 on the file of the Judicial Magistrate No.II, Thoothukudi and quash the same.

For Petitioners : Mr.Antony S. Prabahar

For Respondents : No Appearance

O R D E R

This quash petition is filed to quash the criminal proceedings in M.C.No.10 of 2014 on the file of Judicial Magistrate No.2, Tuticorin as against the petitioners.

2.The respondents filed the complaint under the Prevention of Women from Domestic Violence Act against the petitioners and another alleging that the first respondent herein had been living with the first petitioner's her husband for four years as husband and wife relationship and they had two male children, viz., second and third respondents herein. Thereafter, the husband of the first petitioner neglected her and her children. The first respondent came to know the earlier marriage of her husband with the first petitioner in later period and further alleged that the



family members viz., the petitioners herein harassed and tortured her, for which, she lodged a complaint before the All Women Police Station, Tuticorin. On enquiry, there was a compromise between the parties. Even then, the petitioners herein harassed them. Therefore, the respondents filed the complaint under Section 12 of Prevention of Women from Domestic Violence Act as against the petitioners and the first petitioner's husband. The entire proceedings in M.C.No.10 of 2014 is under challenge by the petitioners, who arraigned as R2 to R4 under the Domestic Violence Act.

3.The learned counsel appearing for the petitioners would submit that the complaint has been preferred by the respondents under the Prevention of Women from Domestic Violence Act and seeking relief as against the first respondent therein viz., the husband of the first petitioner herein. There are no averments have been made as against the petitioners and they have been unnecessarily implicated as parties. Further, he would submit that the complaint itself is not maintainable, since the first respondent has no relationship in the nature of marriage. Admittedly, she had relationship with the husband of the first petitioner and gave birth to two children. Further, the first respondent and the other respondents are resided in a separate place and as such, the complaint under the Domestic Violence Act cannot be maintained and it is unsustainable in the eye of law. Therefore, he prayed for quashment of the entire proceedings.

4.Though notice has been served to the respondents, no one is appeared on behalf of the respondents and their names are printed in the cause list.

5.Heard the learned counsel appearing for the petitioners and considered the case of the respondents.

6.Admittedly, the first respondent did not marry the husband of the first petitioner herein. The husband of the first petitioner and the first respondent had living in relationship and gave birth to the second and third respondents herein. Even in the complaint itself, she has stated that she had no knowledge about the first marriage of the husband with the first petitioner. It is relevant to mention the definition of Section 2(a) of D.V.Act, which read as follows:

"2(a).Aggrieved person means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent."

Section 2(f) defines the expression domestic relationship as

<https://hcservices.gov.in/hcservices/>

"2(f).Domestic relationship means a relationship between two persons who live or have, at any point of



time, lived together in a shares 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."

7. In this regard, the learned counsel appearing for the petitioners would rely upon the judgment reported in **2014-1 LW. (Cr1.) 129 - Indra Sarma V. V.K.V. Sarma**, wherein, the Hon'ble Supreme Court of India has held as follows:

"66. We have, on facts, found that the appellants status was that of a mistress, who is in distress, a survivor of a live-in relationship which is of serious concern, especially when such persons are poor and illiterate, in the event of which vulnerability is more pronounced, which is a societal reality. Children born out of such relationship also suffer most which calls for bringing in remedial measures by the Parliament, through proper legislation."

8. It is seen from the above judgment that as far as the petitioners are concerned, the first respondent never shared the first petitioner's house. Admittedly, the petitioners and respondents are living in a separate place. Further, the entire prayer sought for in the complaint is only as against the first respondent in the complaint viz., the husband of the first petitioner herein. Therefore, the present complaint cannot be maintained as against the petitioners herein.

9. In view of the above discussions, this criminal original petition is allowed and the criminal proceedings in M.C.No.10 of 2014 on the file of Judicial Magistrate No.2, Tuticorin is quashed as against the petitioners herein. Consequently, connected miscellaneous petitions are closed.

sd/
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-III)

To
The Judicial Magistrate No.II, Thoothukudi.

+1cc to Mr.Antony S.Prabakar , Advocate in SR.No. 87467

Arul
DS/RP/SAR3/27.10.2018/3P/3C

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