



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.02.2018

Delivered on : 23.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Crl.O.P. (MD) No.11573 of 2013

and

M.P. (MD) Nos.1 and 2 of 2013

WEB COPY

- 1.S.Sirajudeen
- 2.K.Sikkandar Rasid Khan
- 3.Mrs.Hassan Banu
- 4.S.Ibrahim
- 5.S.Praveen Banu
- 6.Mrs.Shabanu
- 7.R.Nazeer Khan
- 8.Mrs.Arifa Banu
- 9.A.Abdul Rahman
- 10.A.Taj Nisha
- 11.A.Anwar Basha
- 12.Mrs.Noorjahan

... Petitioners/Respondents

Vs.

Mrs.Syed Nisha

... Respondent/Petitioner

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records from the learned Judicial Magistrate No.VI, Madurai, in M.C.No.12 of 2013, dated 20.08.2012 and quash the same.

For Petitioners : Mr.M.Mohamed Nowsath

For Respondent : No Appearance

ORDER

Admittedly, the first petitioner is the husband of the respondent. The petitioners 2 and 3 are the parents of the first petitioner. The fourth petitioner is the elder brother of the first petitioner and the fifth petitioner is the wife of the fourth petitioner. In the same way, the petitioners 6, 8 and 12 are the sisters of the first petitioner and further, the petitioners 7, 9 and 11 are the uncles of the first petitioner. Furthermore, the 10th petitioner is the daughter-in-law of the first petitioner. The petitioners herein are all respondents in M.C.No.12 of 2013 on the file of the Judicial Magistrate Court No.VI, Madurai. The said Miscellaneous Case was filed by the first respondent under Section 12 of Protection of Women from Domestic Violence Act, 2005 [hereinafter referred to as 'the Act'].



2. In order to substantiate the claim made by the petitioners, the counsel representing the petitioners argued as only in order to take revenge against the petitioners, the wife of the first petitioner filed an application before the Magistrate Court without any reason. Further, he added that as of now, the respondent is not residing with the family members of the first petitioner. Accordingly, since the respondent is not residing in the single roof, the penal provisions mentioned in the Act is not attracted against the petitioners herein and thereby, the petitioners are entitled the relief as prayed in the petition.

3. On the other hand, the learned counsel appearing for the respondent submitted that being the wife of the first petitioner, the respondent is entitled to file an application for compensation, accommodation and other reliefs, which are all needed for her peaceful life.

4. On going through the report of the Social Welfare Officer, dated 19.04.2013, which was enclosed in the Typed Set of Papers filed by the petitioners, it could be seen that the Social Welfare Officer had mentioned as after the marriage between the first petitioner and the respondent, as per the request made by the respondent, all other petitioners made an arrangement for forming a separate matrimonial home for the first petitioner and the respondent. Even after making such arrangements, the respondent herein is not living with the first petitioner herein. Moreover, in the order passed by the learned Judicial Magistrate No.VI, Madurai, in Cr.M.P.No.7089 of 2012, which was filed under the provisions of Section 12 of the Act, it is alleged that the respondent herein is not living with the petitioners.

5. In the above situation, it is necessary to look into the judgment of this Court in **Santineer Vincent Rajkumar and another Vs. R.Rejitha** reported in **2017 (2) TNLR 885 (Mad)**, wherein this Court has held as follows:

'18. Be that as it may, most important and significant aspect is that from the uncontroverted averments in the complaint as alluded to *supra*, it is clear that the complainant did not live along with her parents-in-law in the matrimonial home together under the same roof. As noted *supra* elsewhere in this order, parents-in-law were living in K.K.Nagar, whereas the matrimonial home of the complainant and her spouse were elsewhere (two different addresses as set out *supra*).

<https://hcservices.ecourts.gov.in/hcservices/> 19. Turning to the quash petition before me, it is seen that the quash petition is also predicated on the pivotal ground that the



complainant was not living with her parents-in-law under the same roof and therefore, Domestic Violence Act is not attracted. There is also a specific plea taken qua petitioner No.2 to the effect that petitioner No.2 (who is the mother-in-law of the complainant) is not a 'respondent' within the meaning of Section 2(q) of the Domestic Violence Act.'

6. Accordingly, considering the verdict of this Court and also as per the provisions of the Act, since the respondent is not residing with the petitioners 2 to 12 under the single roof, filing an application under the Act is not attracted against the petitioners 2 to 12.

7. Further, in **K.Viswanathan Vs. Sivamalar** reported in **2010 (1) MLJ (Cr1) 815**, this Court has held as follows:

'6. Having regard to the operation of the Act as against the person who is sought to be taken as "respondent" in the proceedings initiated thereunder, it must be pointed out that unless the aggrieved person, namely, respondent herein, substantiates that the person concerned has got domestic relationship or that he is a family member, such person cannot be mechanically impleaded as one of the respondents in the application. If the respondent has any grievance against the petitioner, she is always at liberty to initiate proceedings against him before the appropriate forum for any offence committed by him against her, if she is so advised.'

8. Further, in this context, it is appropriate to extract below Section 2(a), 2(f) and 2(q) of the Act.

'2. Definitions.- In this Act, unless the context otherwise requires,-

(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;

* * * * *

(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;

* * * * *

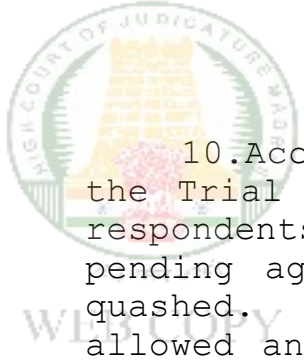
(q) "'respondent'" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;''

9. So, according to the abovesaid definition, the respondent/aggrieved person can file a petition under the provisions of the Act only against the first petitioner, who is her husband. But, in this case, the respondent filed an application before the learned Judicial Magistrate No. VI, Madurai, in which, she included all the relatives on the side of her husband as respondents. In fact, some of the petitioners are residing in a far off place from the residence of the first petitioner. Further, under the Act, if the complainant is not living under the same roof, the Act will not be attracted. I say so, by drawing inspiration from the parameter for scrutinizing such complaints as elucidated by the Hon'ble Supreme Court in **Preeti Gupta and another Vs. State of Jharkhand and another** reported in **2010 (7) SCC 667**, wherein at Paragraph No. 35, it has been held as follows:

''35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The Courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complainant are required to be scrutinised with great care and circumspection.''

(Emphasis supplied)



10. Accordingly, I do not find any justification on the part of the Trial Court including the petitioners 2 to 12 as one of the respondents in the application. Therefore, the proceedings pending against the petitioners 2 to 12 alone are liable to be quashed. Accordingly, this Criminal Original Petition is partly allowed and the proceedings in M.C.No.12 of 2013 pending against the petitioners 2 to 12 before the Judicial Magistrate Court No.VI, Madurai, alone shall stand quashed. This Criminal Original Petition is dismissed in respect of the first petitioner alone. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate No.VI,
Madurai.

+1cc to Mr.M.Mohamed Nowsath, Advocate Sr.No.50753

SMN2

VB/SV/MMS/SAR4/07/03/2018/5P/3C

order in
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