



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 28.02.2018

Delivered on : 06.03.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)No.12576 of 2013

and

M.P.(MD)No.1 of 2013

1.Namasivayam

2.Kalavathi

... Petitioners/Respondents No.2 & 3

Vs.

Mrs.Revathi

... Respondent/Petitioner

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.M.P.No.1868 of 2012 on the file of the Judicial Magistrate Court No.II, Kulithalai and quash the same insofar as the petitioners are concerned.

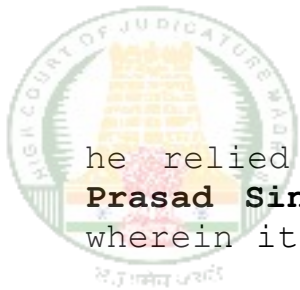
For Petitioners	: Mr.T.Senthil Kumar
For Respondent	: Mr.RM.Sivakumar

ORDER

The petitioners herein are Accused Nos.2 and 3 in C.M.P.No.1868 of 2013 on the file of the Judicial Magistrate Court No.II, Kulithalai. The said proceeding was initiated by the respondent, who is the wife of one Palanivelu, who is arrayed as A1 in the said proceeding. The said proceeding was initiated by way of filing a private complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 [hereinafter referred to as 'the Act']. In the application filed by the respondent, she prayed the relief as stipulated in Sections 19(8), 20(1)(d) & (3), 19(f), 22 and 21 of the Act.

2.Admittedly, the first accused Palanivelu is the husband of the respondent. The present petitioners viz., Namasivayam and Kalavathi are related to the respondent's parents-in-laws. One another accused, who has been arrayed as A4 aljjs is the sister of the first accused. Now, this Criminal Original Petition has been filed to quash the said C.M.P. insofar as the petitioners are concerned.

3.The first and foremost contention raised by the learned counsel appearing for the petitioners is, the learned Magistrate No.II, Kulithalai, took cognizance against the petitioners without receiving any report from the Social Welfare Officer, which is against the law prevailing in the State, for which, the learned counsel appearing for the respondent made a submission that getting a report from the Social Welfare Officer is not necessary for taking cognizance under the provisions of the Act. Further,



he relied on the judgment of the Delhi High Court in **Shambhu Prasad Singh Vs. Manjari** reported in **2013 (1) Crimes (HC) 414**, wherein it has been held as follows:

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'13.It is noteworthy that Section 12(1) does not mandate that an application seeking relief under the Act be accompanied with the DIR or even that it should be moved by a Protection Officer. Even Rule 6 which stipulates the form and manner of making an application to the Magistrate does not require that the DIR must accompany an application for the relief made under Section 12.'

4.So, the straight answer for the ground substantiated by the petitioners is given in the abovesaid judgment. Therefore, the grounds raised by the petitioners to quash the said C.M.P. is not sustainable in law.

5.The second point, which was raised by the learned counsel appearing for the petitioners is, as of now, the petitioners are aged about 54 and 48 years respectively. After their marriage, they were residing at No.8, Reddiyar Street, Ambatur, Chennai. On the other hand, as per the case of the respondent, she was residing in Srirengam along with her husband. Accordingly, the petitioners are not residing under the same roof with the respondent as well as the petitioners are not having any domestic relationship with the respondent and therefore, the allegation leveled by the respondent against the petitioners is not needed for taking into consideration.

6.In order to find out the solution for this ground, it is relevant to extract below Sections 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;''

7. Accordingly, as per the abovesaid definition, the petitioners being the in-laws of the respondent residing at Chennai are not having any chance for residing with the respondent under the same roof. As per the averment made in the complaint at the time of presenting the complaint before the learned Judicial Magistrate No.II, Kulithalai, the respondent is having two children aged about 17 and 15 years respectively. So, the age of the children clearly revealed the fact that the marriage of the respondent was happened prior to 20 years.

8. In this occasion, now, considering the age of the petitioners, they are not having an opportunity to live with respondent at any occasion. In spite of that, the respondent made allegation in the complaint that the petitioners are also residing with her as a joint family. So, the allegation leveled by the respondent is nothing but abuse of process of law. Accordingly, in order to secure the ends of justice, I have no hesitation to allow this Criminal Original Petition. Hence, this Criminal Original Petition is allowed and the proceedings in C.M.P.No.1868 of 2012 on the file of the Judicial Magistrate Court No.II, Kulithalai, in respect of the petitioners alone shall stand quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate No.II,
Kulithalai.

+1cc to Mr.RM.Sivakumar, Advocate Sr.No.53059

+1cc to Mr.T.Senthil Kumar, Advocate Sr.No.53092

SMN2

VB/JC/SAR4/15/03/2018/3P/4C

order in

Cr1.O.P. (MD) No.12576 of 2013

06.03.2018