



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.O.P (MD) No.14793 of 2013

and

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

- 1.R.Justus
- 2.A.D.G.Selvin Rajakumar
- 3.S.Janet Ebenezer Moses @ Janet Selvin
- 4.A.Pricy Leethiyal

...Petitioners/Respondents

Vs.

Mrs.Lydia Catherin

...Respondent/Defacto complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in M.C.No.21 of 2013 filed under Section 12 of Protection of Women from Domestic Violence Act, 2005 on the file of the learned Judicial Magistrate No.I, Tirunelveli and quash the same as illegal.

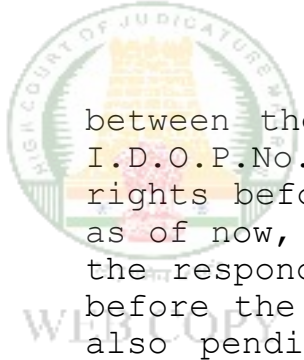
For Petitioners : Mr.T.Lajapathi Roy

For Respondent : Mr.J.Ashok for
M/s.Jeyapal Associates

O R D E R

The petitioners herein are arrayed as R1 to R4 in M.C.No.21 of 2013 on the file of the learned Judicial Magistrate No.I, Tirunelveli. The said proceedings was initiated by the respondent by way of filing a private complaint. Admittedly, the first petitioner herein is the husband of the respondent and the petitioners 2 to 4 are the parents and sister of the first petitioner.

2.The respondent herein filed an application before the learned Judicial Magistrate No.I, Tirunelveli, under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter called as 'the Act'), in which, she sought for the relief under the Provisions of the Act including the residence, compensation, return of "Sreethana" properties, which were handed over at the time of marriage. The marriage between the first petitioner and the respondent was solemnized on 04.03.2011 at C.S.I. Pawl's Church, N.G.O. 'A' Colony, Parayumkottai, Tirunelveli. After the marriage, the first petitioner and the respondent were residing at Chennai in a separate matrimonial home. Thereafter, due to the dispute arose



between them, the first petitioner herein filed an application in I.D.O.P.No.121 of 2013 seeking the relief of restitution of conjugal rights before the learned Principal District Judge, Thoothukudi and as of now, that application is pending. In the above circumstances, the respondent herein preferred an application in M.C.No.3 of 2012, before the learned Judicial Magistrate No.I, Tirunelveli, which is also pending. In the above circumstances, the petitioners herein filed the present application for call for records in M.C.No.21 of 2013 and to quash the same.

2.To substantiate the claim made by the petitioners, the counsel, who is appearing for the petitioners made a submission that after solemnization of the marriage, except the first petitioner, the other petitioners herein were not residing with the respondent under the same roof and therefore, filing of the application under the Provisions of the 'Act' is not justified.

3.On the other hand, the learned counsel appearing for the respondent made a submission that even now the "Sreethana" properties are not returned by the first petitioner. Further, the maintenance amount fixed by the Family Court, Tirunelveli, in M.C.No.27 of 2013, in favour of the child has not been paid by the first petitioner. That is the reason why, the respondent approached the learned Judicial Magistrate No.I, Tirunelveli, by filing the present application. Now, considering the submissions made by the learned counsel appearing on either side, it is relevant to extract the definition of Section 3 of the Act, which reads as follows:-

"3.Definition of domestic violence.- For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

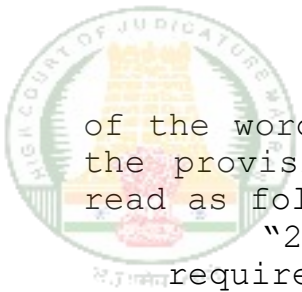
(a) harms or injuries or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injuries or endangers the aggrieved person with a 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."

4.According to the said provision, only the aggrieved person is entitled to file an application. Now, in order to know the meaning



of the word "aggrieved person", it would be appropriate to extract the provision under Sections 2(a), (f) and (q) of the Act, which read as follows:-

"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."

5.Accordingly, when the respondent is not living under the same roof, the Protection of Women from Domestic Violence Act, 2005, will not be attracted. Further, in a case of this nature, it is the duty of the Court to see the parameters elucidated by the Hon'ble Supreme Court in Preeti Gupta and another v. State of Jharkhand and another 2010 (7) SCC 677. I deem it appropriate to extract below paragraph No.35 in Preeti Gupta's case, :-

"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."



6. In the above circumstances, as the application for restitution of conjugal Right is pending, as contended by the learned counsel appearing for the respondent, there is no ground made out to quash the proceedings initiated against the first petitioner.

7. On the other hand, having regard to the Sections 2 to 4 of the Act, since the petitioners 2 to 4 were not residing with the respondent under the same roof and also the respondent is not having any Domestic Relationship with them, this Court is of the view that there is no reason made out for initiation of proceedings against the petitioners 2 to 4 in this case. Hence, the proceedings in M.C.No.21 of 2013 on the file of the Judicial Magistrate Court No.I, Tirunelveli is liable to be quashed only against the petitioners 2 to 4 alone.

8. In the result, this Criminal Original Petition is partly allowed and the proceedings initiated in M.C.No.21 of 2013 against the petitioners 2 to 4 shall stand quashed. With regard to the first petitioner, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate No.I,
Tirunelveli.

+1CC to Mr.T.Lajapathi Roy, Advocate, SR.No. 52444

CRL.O.P (MD) No.14793 of 2013
01.03.2018

Ls

AM/KKR/SAR 4/03.04.2018/4P/3C