



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.02.2018

Delivered on : 27.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P. (MD) No.1746 of 2013

and

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

1.M.Chengammal
2.Arunagiri
3.Latha

... Petitioners

Vs.

S.Prema

... Respondent

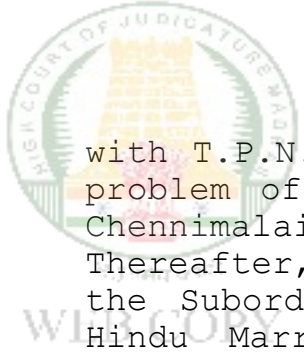
PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the case lodged by the respondent in M.C.No.18 of 2012 pending on the file of the Judicial Magistrate Court, Pudukottai, and quash the same as illegal.

For Petitioners	:	Mr.R.G.Shankar Ganesh
For Respondent	:	Mr.P.Ganapathi Subramanian

ORDER

Admittedly, the first petitioner herein is brother of the second petitioner and the third petitioner is the wife of the second petitioner. The respondent herein is the wife of the first petitioner. The petitioners herein are the respondents in M.C.No.18 of 2012, which is now pending on the file of the Judicial Magistrate Court, Pudukottai.

2.The said miscellaneous case was filed against the petitioners by the respondent under the provisions of the Protection of Women from Domestic Violence Act, 2005 [hereinafter referred to as 'the Act']. Before entering into the merits and de-merits of the petition, it is necessary to look into the facts of the case, in which, the respondent laid allegations against the petitioners. Admittedly, the marriage between the first petitioner and the respondent was solemnized on 07.06.2006 in P.V.R.Thirumana Mandapam, Thiruvapur, Pudukottai District. Thereafter, whenever the first petitioner approached the respondent for sexual intercourse, she used to prevent him by saying lame excuses such as, shyness and menstrual period etc. Ultimately, on 19.03.2007, the Doctor attached



with T.P.N.Hospital, Erode, found that the respondent is having the problem of impotency, thereby, on 21.03.2007, the respondent left Chennimalai without the knowledge of the first petitioner herein. Thereafter, the first petitioner herein filed an application before the Subordinate Court, Perundurai, under Section 12(1)(a) of the Hindu Marriage Act, 1955, for annulling the marriage happened between the first petitioner and the respondent, dated 07.06.2006. The said application was taken on file as H.M.O.P.No.2 of 2009 and finally, after elaborate enquiry, on 19.03.2010, the marriage of the first petitioner and the respondent was dissolved. Before that, after leaving the matrimonial home, the respondent filed a case before the Chief Judicial Magistrate Court, Pudukottai, in which, she is claiming maintenance from the first petitioner. In the said Miscellaneous Case, the learned Chief Judicial Magistrate, Pudukottai, directed the first petitioner to pay a sum of Rs.1,000/- per month to the respondent towards maintenance. Subsequently, so many applications were filed by the first petitioner and the respondent and ultimately, M.C.No.18 of 2012 pertaining to this petition was filed by the respondent and the same is now pending before the Judicial Magistrate Court, Pudukottai.

4.The first and foremost contention raised by the petitioners is that on the date of filing the petition, the relationship of husband and wife was not in subsistence and thereby, taking cognizance by the learned Judicial Magistrate, Pudukottai, under the provisions of the Act is nothing but illegal. So, for the said reason alone, the petitioners have approached this Court for quashing the entire proceedings. Now, on going through the copy of the complaint pertaining to M.C.No.18 of 2012, which is now sought to be quashed in this petition, was filed on 02.11.2012. On the other hand, the marriage between the first petitioner and the respondent was dissolved on 19.03.2010. In this occasion, it is relevant to see the definition of Sections 2(a), 2(f), 2(q) and 3 of the Act, which reads 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;

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-

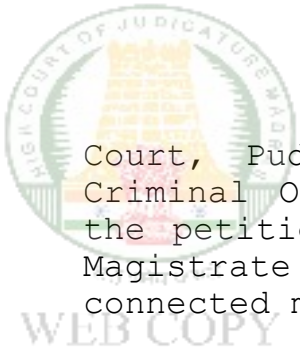
(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures 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.''

5. Now, applying those definitions to the present case on hand, the first petitioner being the ex-husband of the respondent, is not having any domestic relationship with her from 19.03.2010. After dissolving the marriage in 2010, only in the year 2012, the respondent filed the application against the petitioners under the provisions of Sections 18, 19 and 22 of the Act. No doubt, Section 18 provides protection order to the aggrieved person and Section 19 provides residence orders to the respondent and Section 22 deals with compensation orders. For getting those types of orders, it is necessary to prove that the respondent is having domestic relationship with the person, from whom the orders are required. But, in this case, the status of husband and wife are not in existence at the time of filing the applications. Even after knowing those aspects, the respondent herein filed an application for the relief as stated under the Act. So, the act of the respondent is not justifiable one. Therefore, the proceedings in M.C.No.18 of 2012 initiated by the respondent against the petitioners, now pending on the file of the Judicial Magistrate



Court, Pudukottai, are liable to be quashed. Accordingly, this Criminal Original Petition is allowed and the proceedings against the petitioners in M.C.No.18 of 2012, on the file of the Judicial Magistrate Court, Pudukottai, shall stand quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

The Judicial Magistrate,
Pudukottai.

+1CC TO M/S.P.GANAPATHI SUBRAMANIAN, ADVOCATE, SR NO.51569
+1CC TO M/S.R.G.SHANKAR GANESH, ADVOCATE, SR NO.51551

order in
Cr1.O.P. (MD) No.1746 of 2013
27.02.2018

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