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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.02.2018
Delivered on : 09.03.2018

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P. (MD) No.5967 of 2013
and
M.P. (MD) Nos.1 and 2 of 2013

1.T.Raja @ Rajeshkanna
2.T.Tamilvannan
3.T.Shanthi

... Petitioners/Respondents

Vs.

Nithyaselvi

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in the petition in D.V.C.No.1 of 2013 on the file of the Judicial Magistrate Court, Pattukkottai, and quash the proceedings initiated against the petitioners on the basis of the petition filed by the respondent.

For Petitioners : Mr.S.Rajeshkumar Dejango

For Respondent : Mr.T.Senthilkumar

ORDER

The petitioners herein are the accused in D.V.C.No.1 of 2013 on the file of the Judicial Magistrate Court, Pattukkottai. The said case was taken on file by the learned Judicial Magistrate based on the complaint given by the respondent under the provisions of the Protection of Women from Domestic Violence Act, 2005 [hereinafter referred to as 'the Act'].

2.Admittedly, the first petitioner is the husband of the respondent and the second petitioner is the brother of the first petitioner and the third petitioner is the wife of the second petitioner. The respondent filed the said complaint before the learned Judicial Magistrate, Pattukkottai, for the reliefs available



in Sections 18, 19, 20 and 22 of the Act.

3. In order to substantiate the claim made by the petitioners, the learned counsel appearing for the petitioners contended as in order to attract the provisions under the Act, there must be an averment that the petitioners and the respondent are residing in the same roof after solemnisation of the marriage. But, in this case, nothing was averred by the respondent against the petitioners 2 and 3. Being the relative of the first petitioner, they are added as accused in the complaint filed by the respondent and thereby, the proceeding initiated against the petitioners 2 and 3 is nothing but abuse of process of law. In support of his submissions, he relied on the judgment of this Court in **Santineer Vincent Rajkumar and another Vs. R.Rejitha** reported in **2017 (2) LW (Cr1.) 399**, wherein at Paragraph No.19, it has been held as follows:

'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.'

4. Now, applying the principle laid down in the abovesaid judgment to the facts of this case on hand, it is clear that the respondent has specifically stated at Page No.2 Paragraph No.3 of the copy of the petition in D.V.C.No.1 of 2013 as, after the marriage, she was residing with the first petitioner in a separate rented house. Accordingly, the respondent himself admitted in the complaint as the petitioners 2 and 3 are not residing with them after solemnization of the marriage and thereby, as per the above verdict of this Court, the provisions of this Act is not attracted against the petitioners 2 and 3.

5. Now, according to the case of the petitioners, as of now, the first petitioner and the respondent are having so many litigations in various Forums, but after enactment of the Act, pending litigation in some other Courts, is not a bar for lodging a complaint under the provisions of the Act. Beyond that, no other submissions are made by the learned counsel appearing for the petitioners with regard to the prayer sought in this petition and thereby, this Court comes to the conclusion that the proceedings initiated against the petitioners 2 and 3 alone are liable to be quashed. Accordingly, the proceedings against them shall stand quashed and the Criminal Original Petition is allowed insofar the petitioners 2 and 3 are concerned. With regard to the proceedings against the first petitioner, the ground raised by him is not a



substantial one. Hence, this Criminal Original Petition is dismissed as against the first petitioner. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate,
Pattukkottai.

+ 1 CC TO Mr.RAJESHKUMAR DEJANGO, ADVOCATE IN SR No. 54775
+ 1 CC TO Mr.T.SENTHILKUMAR, ADVOCATE IN SR No. 53989

SMN2
TE/KKR/SAR-1 : 22/03/2018 : 3P/4C

order in
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