



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.02.2018

Delivered on : 23.02.2018

WEB COPY

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P. (MD) No.7703 of 2013 and
M.P. (MD) Nos.1 and 2 of 2013

1.Chinna Sakkaiah
2.Ganthimathi
3.Ramanathen
4.Sakkaiah

... Petitioners

Vs.

1.Angala Eswari
2.Minor Raja Sangavi
3.Minor Raja Mani
[Minor respondents 2 and 3 rep.
by their mother and guardian,
the first respondent herein]
4.Sathya Bama

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the proceedings in private complaint in Cr.M.P.No.435 of 2013 on the file of the Judicial Magistrate Court No.I, Virudhunagar and quash the same as against the petitioners herein.

For Petitioners	:	Mr.T.Selvan
For R1 to R3	:	No Appearance
For R4	:	Mr.S.Venkatesh for Mr.A.Sivaji

ORDER

The petitioners herein are the respondents in Cr.M.P.No.435 of 2013, on the file of the Judicial Magistrate Court No.I, Virudhunagar. The first respondent in this case for herself and on behalf of the respondents 2 and 3 filed the abovesaid case against the petitioners herein under the provisions of Protection of Women from Domestic Violence Act, 2005, in which, she prayed for the relief to protect her from the domestic violence; to enhance the monthly maintenance to the tune of Rs.15,000/- or to pay total a sum of Rs.10,00,000/- towards maintenance; to pay a sum of Rs.5,00,000/- towards compensation; and also an order of stay from selling property in S.Nos.100/2, 100/3, 100/4, 100/5, 100/6 and 100/7, measuring an extent of 92 cents, situated at Mudiyanoor Village,



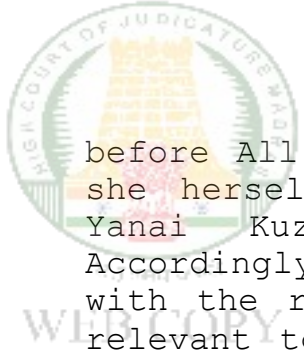
Virudhunagar District. Now, the petitioners have filed this Criminal Original Petition to quash the entire proceedings as illegal.

2. Admittedly, the first petitioner herein is the husband of the first respondent. The petitioners 2 and 3 are the parents-in-law of the first respondent. The fourth petitioner is the in-law of the first respondent. Previous to filing of the application before the Judicial Magistrate Court No.I, Virudhunagar, the first respondent lodged a complaint before the police authorities under Section 498-A IPC. After filing of final report in that case, the same was taken on file as C.C.No.120 of 2008 on the file of the Judicial Magistrate Court, Aruppukottai, in which, the petitioners herein are all added as accused. After elaborate trial, the learned Judicial Magistrate, Aruppukottai, acquitted the accused from the charges framed against them. Further, before lodging the criminal case, the first petitioner herein filed a petition before the Subordinate Court, Virudhunagar, for the relief of restitution of conjugal rights in H.M.O.P.No.15 of 2005. Subsequently, the same was dismissed as not pressed by recording the Memo. On the other hand, the respondents herein received maintenance as per the order passed in the abovesaid case. Subsequent to the dismissal of that application, the first petitioner again filed one another application in the same Court for the relief of divorce, which was taken on file as H.M.O.P.No.45 of 2008 and subsequently, the same was dismissed for default. Thereafter, the first respondent herein filed Cr.M.P.No.435 of 2013 before the Judicial Magistrate Court No.I, Virudhunagar.

3. Now, the first and foremost contention raised by the petitioners is that even though the respondents in this application are related with the petitioners, they are not residing in the same roof, thereby, the respondents herein are not qualified in filing the application under the provisions of the Protection of Women from Domestic Violence Act.

4. On the other hand, the learned counsel appearing for the respondents submitted that after the marriage, the petitioners and the respondents are all residing in the same roof. So, the respondent is eligible to file a case under the provisions of Protection of Women from Domestic Violence Act.

5. Now, considering the submissions advanced by the learned counsel on either side, it would appear that at the time of filing the petition, the first petitioner was working as Special Revenue Officer, District Backward Class Minority Welfare Office, Karur. At the same time, the petitioners 2 to 4 are all residing in a Village of Mudiyanoor, which was situated in Virudhunagar District. So, considering the distance between Karur and Virudhunagar, it is not possible for the first petitioner residing in Mudiyanoor and attend the court in Karur. For which, on going through the evidence given by the first respondent before the learned Judicial Magistrate, Aruppukottai, in C.C.No.120 of 2008 as after lodging the complaint



before All Women Police Station, Virudhunagar, by way of re-union, she herself and the first petitioner are residing separately in Yanai Kuzhai Street, Kakka Thevar Compound, Virudhunagar. Accordingly, after the marriage, the first petitioner alone residing with the respondents in the same roof. In this situation, it is relevant to refer the judgment of this Court in **Santineer Vincent Rajkumar and another Vs. R.Rejitha** reported in **2017 (2) TNLR 885 (Mad)**, wherein at Paragraphs Nos.18 and 19, it has been 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*).

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.So, as per the observation of this Court, in this case also, the respondent gave evidence as after the marriage, the parents-in-law are living in a different roof. Moreover, on culminating the entire action and in-action on the part of both the first petitioner and the first respondent shows that before approaching the learned Judicial Magistrate No.I, Virudhunagar, by way of filing the application pertaining to this Criminal Original Petition, they approached the Subordinate Court, Virudhunagar, for getting an order of divorce and also the first respondent approached the police officers for taking action against the petitioners through a criminal complaint, in which, she made allegations against the petitioners herein that they demanded more dowry. So, all the proceedings initiated by either parties disclosed that the first petitioner and the respondent are all not having any cordial relationship after the marriage.

7.In the above situation, it is relevant to refer the decision of 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.'

(underlining made by me to supply emphasis)

8.Now, in the instant case, even according to the uncontroverted averments as contended in the complaint, the first respondent herein never resided with her parents-in-law. Accordingly, I have no hesitation to come to the conclusion that the Domestic Violence Act is not attracted to the qua parents-in-law and in-law, who are all the petitioners 2 to 4 before me. Therefore, the complaint deserves to be quashed with regard to the petitioners 2 to 4. Accordingly, this Criminal Original Petition is partly allowed and the proceedings in Cr.M.P.No.435 of 2013 pending on the file of the Judicial Magistrate Court No.I, Virudhunagar, against the petitioners 2 to 4 alone shall stand quashed. Insofar the first petitioner is concerned, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate No.I, Virudhunagar.

+ 1 CC TO Mr.A.SIVAJI, ADVOCATE IN SR No. 51088

+ 1 CC TO Mr.T.SELVAN, ADVOCATE IN SR No. 50841

SMN2

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order in
CrI.O.P.(MD)No.7703 of 2013
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