



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.02.2018

Delivered on : 23.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CrI.O.P. (MD) No.9929 of 2013

and

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

1.Chelladurai

2.Marithangam

3.Raja

4.Raghul

5.Arockiamary @ Asha

... Petitioners

Vs.

Sebastin

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in M.C.No.14 of 2013 on the file fo the Judicial Magistrate Court No.II, Virudhunagar and quash the same.

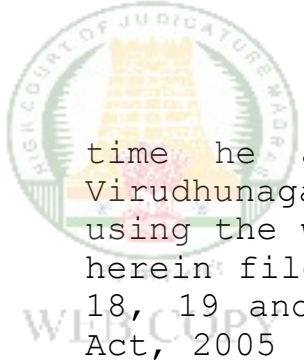
For Petitioners : Mr.N.Mohideen Basha

For Respondent : Mr.G.Mariappan

ORDER

The petitioners herein are respondents 1 to 5 in M.C.No.14 of 2013 on the file of the Judicial Magistrate Court No.II, Virudhunagar. The said Miscellaneous Case was filed by one Sebastian, who is father of one Maria Stella. In the year 2003, the said Maria Stella got married with one Sebasitan Raju, who is in-law of the fifth petitioner herein.

2.Now, on going through the relationship between the petitioners and the respondent, it is an admitted fact that the fifth petitioner's in-law, viz., Sebastian Raju, had married the daughter of the respondent in the year 2003. The petitioners 1 and 2 herein are the husband and wife and the petitioners 3 to 5 are their children. Now, the respondent, being the complainant in M.C.No.14 of 2013, on the file of the Judicial Magistrate Court No.II, Virudhunagar, made an allegation as 31.03.2013 when at the



time he and her daughter on the way to Ignatiour Church, Virudhunagar, the petitioners 1 to 5 waylaid and abused them by using the word 'உன்னை வாழ விடமாட்டோம்', for which, the respondent herein filed M.C.No.14 of 2013 under Section 12 r/w. Sections 17, 18, 19 and 20 of the Protection of Women from Domestic Violence Act, 2005 [hereinafter referred to as 'the Act'].

3. In order to substantiate the claim made by the petitioners, the learned counsel appearing for the petitioners submitted that the respondent herein is not at all having any domestic relationship with the petitioners and he is related with the petitioners only through his son-in-law. Accordingly, under the Act, he is not entitled to file a complaint as like this. Now, considering the submission made by the learned counsel appearing for the petitioners, it is necessary to read 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 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.''

4. Now, as per the abovesaid provision, the aggrieved person alone is having the right to file a complaint under the provisions of the said Act. In this context, it is necessary to see the definition of the word 'aggrieved person', enumerated in Section 2 (a) 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;''

5. Furthermore, Section 2(f) of the Act defines the word 'domestic relationship', which reads as follows:

''(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;''

6. A conjoint reading of the abovesaid two provisions clearly enumerated a person at any point of time lived together in a shared household alone is having the right to file a complaint under the provisions of the Act. But, in this case, the respondent herein is the father of one Stella Mary. As of now, according to the complaint given by the respondent, the said Stella Mary and her husband were residing in the same roof peacefully. While things are being so, the respondent being the father of the said lady, is no way connected with the petitioners and he is not at all having the domestic relationship with them. Moreover, he is not an aggrieved person as per the Act to lodge a complaint before the Judicial Magistrate. In the circumstances, it is necessary to see the judgment of our 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.'' (Emphasis supplied)

7. So, considering the verdict of our Hon'ble Supreme Court, in this case also, the complaint filed by the respondent against the petitioners under the provisions of the Act, is nothing but without any basis. As per the Act, he is not having any domestic relationship with the petitioners. The learned Judicial Magistrate No.II, Virudhunagar, without looking into the said aspect took cognizance in this case. So, the action on the part of the learned Judicial Magistrate No.II, Virudhunagar, in taking cognizance of the complaint given by the respondent is not justifiable. Hence, the proceedings in M.C.No.14 of 2013 initiated against the petitioners pending on the file of the Judicial Magistrate Court No.II, Virudhunagar, is liable to be quashed. Accordingly, this Criminal Original Petition is allowed and the proceedings pending against the petitioners in M.C.No.14 of 2013 on the file of the Judicial Magistrate Court No.II, Virudhunagar, shall stand quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate No.II,
Virudhunagar.

+ 1 cc TO Mr.G.Mariappan , Advocate in SR No. 50873
+ 1 cc TO Mr.N.Mohideen Basha , Advocate in SR No. 51484

smn2
AE/CVC/SAR3/07.03.2018/4P/4C

order in
Crl.O.P. (MD) No.9929 of 2013
23.02.2018