

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.O.P.No.19937 of 2012 and
M.P.No.1 fo 2012

S.G.David ... Petitioner

Vs.

Hannah Judit Karuniya ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the proceedings in M.C.No.23 of 2012 on the file of the learned Judicial Magistrate No.II, Poonamallee and quash the same.

For Petitioner : Mr.T.T.Ravichandran

For Respondent : Mr.I.Syed Sibghatulla
Legal Aid Counsel

ORDER

The petitioner herein has filed this present petition seeking to quash the proceedings in M.C.No.23 of 2012 on the file of the learned Judicial Magistrate No.II, Poonamallee.

2 The petitioner is husband and respondent is wife. The marriage between the petitioner and the respondent was solemnized on 03.09.2008 and due to their wedlock, two children were born. Thereafter, the respondent/wife made complaint against the petitioner/husband before the Young Women Christian Association. The respondent also filed complaint against her husband, the petitioner herein, before the Inspector of Police, Avadi and the same was referred to the District Social Welfare Office, Thiruvallur. The District Social Welfare Officer, Thiruvallur, after detailed enquiry, has filed report on 19.03.2012 and the matter was compromised between the parties. Thereafter, the petitioner filed a petition before the Family Court, Salem, seeking dissolution of marriage, in I.D.O.P.No.7 of 2012 and pendency of the above case, the respondent again filed a complaint before the District Social Welfare Officer, Avadi, and the District Social Welfare Officer, has filed domestic violence report before the learned Judicial Magistrate No.II, Poonamallee, which was taken on file in M.C.No.23 of 2012. Now the petitioner seeks to quash the case in M.C.No.23 of 2012 on the ground of jurisdiction and others.

3 According to learned counsel appearing for the petitioner the respondent has filed several complainants before the various authorities and subsequently withdrawn. The petitioner, due to the cruelty caused by the respondent, has filed the petition for divorce, which was allowed in favour of the petitioner granting divorce on the ground of cruelty and the learned Judge, while granting divorce has observed that the respondent has not proved that there was harassment of dowry by the petitioner. The respondent with a malafide intention to evict the petitioner in the house, which was bought by the petitioner, has filed the present maintenance case. The petitioner has also paid some of the EMIs for the said house and since the respondent is residing in the house, now she is paying the EMI. The petitioner has never disturbed the residence of the respondent. Further, the Court, in which the maintenance case is pending does not have any jurisdiction to conduct the enquiry. There is no prima facie case in the maintenance case and the same is liable to be quashed.

4 The learned legal aid counsel appearing for the respondent would submit that since the petitioner is trying to evict the respondent in the house, she has filed the present case and whatever the claim available to the petitioner, he can establish before the Court below.

5 Heard the learned counsel appearing on either side and perused the materials available on record.

6 It is seen that the respondent has earlier filed complaints against the petitioner and subsequently withdrawn and now since the petitioner is trying to evict the respondent from the house, for which she is paying EMI, she has filed the present maintenance case. Even in the order of divorce referred to by the learned counsel for the petitioner, it was observed that the house was constructed by obtaining loan and some of the EMIs have been paid by the petitioner and some of the EMIs have been paid by the respondent, but, however, the learned counsel for the petitioner admits that the respondent is in possession of the house. Now, the allegation of the respondent/wife is that the petitioner is trying to evict the respondent and disturbing the peaceful possession of the respondent. The learned counsel for the petitioner has stated that the petitioner is ready to give an undertaking that the he will not disturb the possession of the respondent. This Court is of the view that there is prima facie case against the petitioner and the same can be decided only after detailed enquiry. This Court does not find any reason to invoke Section 482 of Cr.P.C.

7 In the result, the criminal original petition is dismissed. Consequently, connected miscellaneous petition is closed. However, since the matter is pending from the year 2012, the learned Judicial Magistrate No.II, Poonamallee, is

directed to dispose of the case in accordance with law within a period of three months from the date of receipt of a copy of this order. If the parties are approaching the Court below for settlement, the learned Magistrate shall consider their request generously.

8 Mr.I.Syed Sibghatulla, learned counsel who appeared on behalf of the respondent, as Legal Aid Counsel is entitled for remuneration as per rules.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate No.II, Poonamallee.

Copy to:

Mr.I.Syed Sibghatulla, Legal Aid Counsel(For information)
Crl.O.P.No.19937 of 2012 and
M.P.No.1 fo 2012

A.SK(11/12/2019)



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