

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Order	Date of Pronouncing the Order
26.10.2018	07.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.23174 of 2010

and

Crl.M.P. No.1 of 2010

1. R.Soundararajan
2. Pappathi
3. Vasantha
4. Rajalakxmi
5. Suresh

... Petitioners

Vs.

S.Poongoodi

...Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to the pending proceedings in C.M.P No.5138 of 2010 on the file of the learned Judicial Magistrate No.III, Salem, Salem District and quash the same.

For Petitioners : Mr.C.D.Johnson

For Respondent : No appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.M.P No.5138 of 2010 on the file of the learned Judicial Magistrate No.III, Salem, Salem District.

2. The first petitioner herein is the husband, second petitioner is the mother-in-law, third and fourth petitioners are the sisters-in-law and fifth petitioner is the son of the third petitioner. The defacto complainant, is the estranged wife of the first petitioner.

3. The case of the respondent is that the marriage between the respondent and the first petitioner took place on 19.04.2006 at Kodumudi Eswaran Temple. During Marriage sreedhana articles were given. After marriage both the respondent and the first

petitioner lived in Erode. Out of wedlock, a male child namely Saravanan was born on 18.12.2007. During marriage no photos were taken. The respondent and the first petitioner lived happily only for 10 days. Thereafter petitioners 1 to 4 started demanding more dowry and the respondent was also physically assaulted. Unable to bear the harassment, she had to yield of Rs.10,000/-. Thereafter also the petitioners not satisfied with the same, had continued to ill treat her. During the period of pregnancy, the respondent came to know that the petitioner had already married which was subsisting and the 'Thali', which was tied by the first petitioner during the marriage was not of gold and that of brass. The petitioners knowing that the respondent was under pregnancy, then also she was assaulted. She was kept as bonded labour and was never allowed to speak with others and she was treated as domestic help. The respondent's mother and sister went to visit the respondent and seeing the situation in which the respondent was living had taken her to their house and they hoped everything will be solved if the child is born. In the meanwhile, the first petitioner and others have vacated the house and they were unable to be traced. Even after the child was born on 18.02.2007, the first petitioner had never visited the respondent and enquired about the same. Thereafter, only on 28.06.2010, the respondent could find out the whereabouts of the first petitioner. The first petitioner was working as a Cashier in State Bank of India, Sankakiri Branch and he was earning Rs.20,000/- per month and he was also having a own house value of Rs.40,00,000/- and he had also inherited the property of his forefather. Hence she filed a petition under Domestic Violence Act seeking protection for her safety and security, return of marriage expenses of Rs.60,00,000/-, maintenance of Rs.20,000/- per month and for mental agony and damages Rs.10,00,000/-.

4. The contention of the petitioners is that the respondent had not established any domestic relationship with the first petitioner and she is not an aggrieved person and there is no domestic relationship as per the Act. The only document on which the respondent is claiming is the birth certification of her son Saravanan, who was born on 18.12.2007, in which the father name has been shown as that of the first petitioner and at any point of time they had never shared the house.

5. It is pertinent to note that according to the respondent, though marriage took place on 19.04.2006 and child was born on 18.12.2007, she was unable to find out the whereabouts of the first petitioner till 28.06.2010 for the period of three years itself would come to show that there was no domestic relationship between the first petitioner and the respondent as claimed.

6. It is the admitted case of the respondent that she lived along with the first and second petitioner only in Erode for some time and the petitioners 3 to 5 had never shared a common household. Further the prayer sought for by the respondent are all against the first petitioner. The petitioners 2 to 5 have been arrayed only being mother, sisters-in-laws, Sister's son of the first petitioner. Other than this no specific averments or any prayer sought against these petitioners. Though the first petitioner disputed the marriage with the respondent having living in relationship case could be covered under Domestic Violence Act. Further paternity of the child has not been seriously disputed. In view of the same all the protection orders are sought against the first petitioner only. Hence this Court dismisses the quash petition as against the first petitioner and with regard to the other petitioners namely 2 to 5, there is no specific averment or prayer against them and the petition is allowed as against the petitioner 2 to 5.

7. This Criminal Original Petition stands allowed and as a sequel, the proceedings, in C.M.P No.5138 of 2010 on the file of the learned Judicial Magistrate No.III, Salem, Salem District in so far as the first petitioner stands dismissed in respect of the petitioners 2 to 5 stands allowed is hereby quashed. It is made clear that the case to proceed insofar as first petitioner herein is concerned. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate No.III,
Salem.

Crl.O.P.No.23174 of 2010
and
Crl.M.P. No.1 of 2010

rrs 06/02/2019