

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.7095 of 2013

and

M.P.No.1 of 2013

Raja Jayapandian ... Petitioner/2nd Respondent

Vs.

Mrs.Thangabhanumathi ... Respondent/Petitioner

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records and to quash all further proceedings in M.C.No.15 of 2012 on the file of the XXIII Metropolitan Magistrate Court, Saidapet.

For Petitioner : Mr.R.Vijayaraghavan

For Respondent : Mr.K.Goviganesan

O R D E R

Criminal Original Petition is filed to call for the records and to quash all further proceedings in M.C.No.15 of 2012 on the file of the XXIII Metropolitan Magistrate, Saidapet.

2.The petitioner is the second respondent in M.C.No.15 of 2012 pending on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai.

3.The respondent is the daughter-in-law and the petitioner therein.

4.The respondent had filed a case under Domestic Violence Act against the petitioner and his son seeking Protection order under Sections 18, 19, 20, 21, 22 and 23 of the Act.

5.The Contention of the petitioner is that the petitioner is residing at Madurai and his son Muthu Kumar was married to the

respondent were residing separately at Nesapakkam, Chennai from the date of their marriage. Hence, there is no occasion for the petitioner to indulge in domestic violence.

6.The gist of the complaint is that the marriage between the petitioner's son viz., Muthu Kumar and the respondent had taken place on 15.02.2009 at Madurai. During the marriage, the parents of the respondent had given 150 sovereigns of gold jewels and Rs.5,00,000/- (Rupees five lakh only) worth household articles as sridhana. The petitioner's son was working in Aircel as an Officer. From ten days after the marriage, the petitioner's son and the respondent were living separately at Chennai. Out of their marriage a girl baby was born on 11.12.2009. Whenever the petitioner used to visit them he used to speak in double language filthy words. The respondent had complained about the same to her mother-in-law and to her husband. Both of them had not cared about it. The petitioner's son had given a false complaint that the respondent had attempted suicide. During the enquiry on 21.02.2011 the petitioner was warned by the Sub Inspector of Police, Sellur Police Station, Madurai City and not to enter the matrimonial house.

7.In the meanwhile, the respondent became pregnant against her wish and aborted the same. The respondent's husband had demanded Rs.10,00,000/- (Rupees ten lakh only) for the purchase of a house. On 20.08.2011, the respondent's father died. Three months thereafter the petitioner's son had demanded share in the family property. Further they had also given a false complaint, as though, the respondent was having illegal relationship with one Kannan. An enquiry was conducted on 05.12.2011, they were called and warned for making such allegation. For the marriage of the petitioner's second son Rs.5,00,000/- of dowry was demanded from the respondent and the respondent had given a complaint before the All Women Police Station, Ashok Nagar. Since the respondent's father recently passed away and the respondent was not allowed into the matrimonial house, she gave a complaint before the All Women Police Station, Ashok Nagar. The petitioner's son had also filed a divorce petition before the III Additional Family Court, Madurai.

8.The petitioner's son had deserted the respondent and the respondent was living alone with her infant seeking Residential order, Protection order and Return of her sridhana articles. She had preferred a complaint before the Protection Officer. The Protection Officer had forwarded a Domestic Incident Report to the concerned Court. Thereafter, the concerned Court, took cognizance of the case and sent summons to the petitioner and his son, against which the present quash petition is filed.

9.The contention of the petitioner is that even according to the respondent ten days after the marriage (15.02.2009), the respondent was living separately at Chennai and the petitioner was the residing at Madurai. They never lived in the shared house hold. The respondent was not a normal person and she suffered mental disorder and attempted suicide and she was even given treatment as inpatient on 26.05.2011. The respondent attempted to commit suicide by taking over dose of pills which was prescribed for her mental disorder, due to which she was rushed to Vijaya Hospital for giving treatment. During the treatment, her pregnancy was terminated as a part of the medical treatment and the petitioner was nothing to do with the same.

10.Further the respondent had illegal intimacy with one Kannan, who is the college mate of the respondent and the relationship of the said Kannan and the respondent continued against the wish of the petitioner and his family members. Thereafter a police complaint was filed before the Villakuthoon Police Station, Madurai and the petitioner's son had also filed H.M.O.P.No.22 of 2012 before the III Additional Judge, Madurai. The respondent was in the habit of given false complaint against the petitioner and his family members and a case in Crime No.14 of 2012 came to be registered under Section 498(A), 406, 312, 294(b) IPC and Section 4 of Tamil Nadu Women Harassment Act. Thereafter a charge memo came to be filed in C.C.No.1164 of 2013 before the XVIII Metropolitan Magistrate, Saidapet. After the full-fledged trial the Metropolitan Magistrate had rendered a Judgment of acquittal on 05.10.2018.

11.The respondent had also filed H.M.O.P.No.175 of 2017 seeking Restitution of Conjugal Rights. The III Additional Judge, Madurai by a common Judgment dated 12.09.2017 had dismissed the H.M.O.P.No.175 of 2017 filed by the respondent, wherein the relationship between the respondent and the said Kannan have been elaborately discussed. Further the Lower Court had granted divorce to the petitioner's son by set aside the marriage dated 15.02.2009. Both the Criminal Court as well as the Family Court had elaborately analysed the evidences and had given a clear and categorical finding that the petitioner had never lived together in a shared house hold and the petitioner residing at Madurai and the respondent at Chennai have been confirmed. Further the relief sought by the respondent is only against the said Muthu Kumar and hence sought the above case against him to be quashed.

12.The respondent had opposed the quash petition stating that the respondent has put to unbearable suffering. Whenever the petitioner used to visit his son Muthu Kumar he used to utter illicit comments. His intention and approach towards the respondent was with bad intention and though the respondent had complained about the same to her mother-in-law and to her husband they had ignored the same and had not protected her. The demand for dowry was there right from the marriage and the demand was continuous. The abortion of the second pregnancy was forcibly done against her wish. The petitioner's son had deserted the matrimonial home leaving the respondent and her infant baby and also further failed to make the EMI payment for the house in which they were residing and she was to be forcibly evicted from the house. No family maintenance was paid and the respondent was not taken care by her husband and hence the respondent had filed a complaint before the Protection Officer and thereafter, due enquiry the above case came to be filed.

13.Considering the rival submission and the materials, it is found that the respondent was not in the normal mental state and she was taking medical treatment for the same. On one occasion she had consumed over dosage of medicines prescribed for her mental health. Thereafter she was rushed to the Vijaya Hospital and during treatment her pregnancy was terminated, for which the petitioner could not be found faulted.

14.Further it is an admitted case of the respondent that ten days after their marriage, the respondent and her husband Muthu Kumar were living separately at Chennai. The petitioner was living in Madurai with his family and they did not share the common house hold. With regard to the other allegations, the XVIII Metropolitan Magistrate had rendered a Judgment dated 05.10.2018 in C.C.No.1164 of 2013 and the III Additional Judge, Madurai by a common Judgment in H.M.O.P.No.175 of 2017 and H.M.O.P.No.22 of 2012 dated 12.09.2017, elaborately analysed the evidences and acquitted the petitioner and his family members for the dowry demand, harassment, cruelty and other offences. The Family Court Madurai found the contention of the respondent are not sustainable. The petitioner's son was granted divorce. The pith and substance of the cases are same.

15.In view of the same the proceedings as against the petitioner in M.C.No.15 of 2012 on the file of the XXIII Metropolitan Magistrate, Saidapet is hereby quashed.

16. Accordingly, this Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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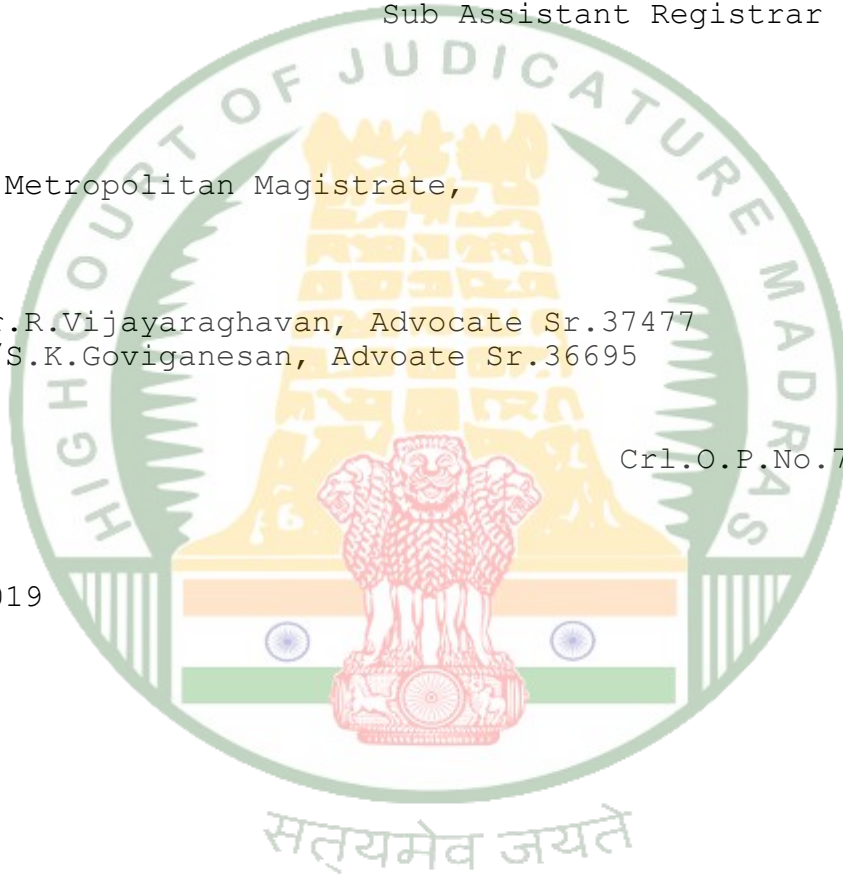
The XXIII Metropolitan Magistrate,
Saidapet.

+1cc to Mr.R.Vijayaraghavan, Advocate Sr.37477

+1cc to M/S.K.Goviganesan, Advoate Sr.36695

Crl.O.P.No.7095 of 2013

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