

Crl.O.P.Nos.3340, 3346 and 7325 of 2014**P.RAJAMANICKAM.J.,**

These petitions have been listed on 29.04.2019 under the caption "for being mentioned". On 29.04.2019, the learned counsel for the petitioners in Crl.O.P.No.7325 of 2014 was present but, no representation for the respondent and hence, the matters have been listed today. Today also the learned counsel for the petitioners alone present. No representation for the respondent.

2. The learned counsel for the petitioners in Crl.O.P.No.7325 of 2014 has submitted that this Court while disposing of the aforesaid Criminal Original Petitions on 31.01.2019 in para No.9 has observed that the proceedings against the petitioners viz., Kumar, Kasturi, Gowri, Palani and Sampathkumar are liable to be quashed. He further submitted that in Crl.O.P.No.7325 of 2014, there are three petitioners namely, 1) K.Kasi Mudaliar, 2) Varathammal and 3) K.Kumar, but finally this Court has dismissed the entire petition in Crl.O.P.No.7325 of 2014. He further submitted that since this Court has come to the conclusion that the proceedings against the third petitioner namely, K.Kumar also has to be quashed, but while recording final order, it has been recorded as the entire Crl.OP.No.7325 of 2014 dismissed and that the above mistake must be only a clerical mistake and hence he requests to correct the said mistake.

P.RAJAMANICKAM.J.,

dna

3. A perusal of the orders passed by this Court dated 31.01.2019 shows that in para No.9, it has been clearly held that the proceedings against the petitioners namely, K.Kumar, Kasthuri, Gowri, Palani and Sampath Kumar have to be quashed and the petition in respect of K.Kasi Mudaliar and Varathammal has to be dismissed but in the final paragraph, it has been recorded that the entire Crl.O.P.No.7325 of 2014 has been dismissed. The said mistake is only a clerical/Typographical error. Hence, the said mistake is corrected. The final paragraph has to be deleted and typed as follows:

"In the result, Crl.OP.Nos.3340 and 3346 of 2014 are allowed. Crl.OP.No.7325 of 2014 is allowed only in respect of third petitioner viz., K.Kumar and petition is dismissed against the petitioners 1 and 2 viz., K. Kasi Mudaliar and Varathammal."

4. After Para No.9 instead of mentioning as para No.10, it has been wrongly mentioned as Para No.12 and that also has to be corrected.

dna

30.04.2019

Note: The Registry is directed to make necessary correction in the orders and issue fresh copy

**Crl.O.P.Nos.3340, 3346 and
7325 of 2014**

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.08.2018

PRONOUNCED ON : .01.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.OP.Nos.3340, 3346 and 7325 of 2014

and

MP.Nos.1+ 1+ 1 of 2014

Crl.OP.No.3340 of 2014

1. Mrs.Kasturi
2. Palani

... Petitioners

Mrs.Srijothi

... Respondent

Crl.OP.No.3346 of 2014

1. Mrs.Gowri
2. Sampath Kumar

... Petitioners

Mrs.Srijothi

... Respondent

Crl.OP.No.7325 of 2014

1. K.Kasi Mudaliar
2. Varathammal
3. K.Kumar

... Petitioners

Vs.

Mrs.Srijothi

... Respondent

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records in S.T.C.No.13 of 2013, pending on the file of the Judicial Magistrate, Maduranthagam and quash the same.

Crl.OP.No.3340 of 2014

For Petitioners : Mr.A.M.Rahamath Ali
for P.Suresh

For Respondent : Mr.G.Magesh Kumar

Crl.OP.No.3346 of 2014

For Petitioners : Mr.A.M.Rahamath Ali
for H.Raja Sekar

For Respondent : Mr.G.Magesh Kumar

Crl.OP.No.7325 of 2014

For Petitioners : Mr.K.Govi Ganesan

For Respondent : Mr.G.Magesh Kumar

COMMON ORDER

Crl.O.P.No.3340 of 2014 has been filed by the respondents 5 and 7;
Crl.O.P.No.3346 of 2014 has been filed by the respondents 6 and 8 and
Crl.O.P.No.7325 of 2014 has been filed by the respondents 2 to 4 in
S.T.C.M.C.No.13 of 2013 on the file of the Judicial Magistrate Court,
Maduranthagam, to quash the proceedings against them in the aforesaid
S.T.C./M.C.

2. The respondent herein has filed a petition under Sections 12,19 (8), 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 to direct the respondents therein to return the shridhana properties, to direct the first respondent therein to pay a sum of Rs.10,000/- as litigation expenses and to direct the respondents therein to pay a sum of Rs.15,00,000/- as compensation. Based on the said petition, the learned Judicial Magistrate, Maduranthagam, has taken the case on file in STC/MC No.13 of 2013 and issued notice to the

respondents therein. After receipt of notice, the respondents 2 to 8 therein have filed these petitions under Section 482 Cr.P.C to quash the proceedings against them in STC/MC No.13 of 2013 on the file of the Judicial Magistrate Court, Maduranthagam.

3. Heard both sides.

4. The learned counsel for the petitioners has submitted that the marriage between the respondent herein and one K.Moorthy was solemnized at Murugesha Mudaliar Marriage Hall, Maduranthagam, on 18.02.2018. He further submitted that the respondent herein has filed a petition under Section 125 Cr.P.C seeking maintenance in M.C.No.9 of 2010 on the file of the Judicial Magistrate, Maduranthagam against her husband viz., K.Moorthy and the same is still pending. He further submitted that the respondent herein also filed a petition in H.M.O.P.No.25 of 2009 on the file of the Sub-Judge, Maduranthagam, seeking divorce and the same is also pending. He further submitted that the petitioners viz., Kasi Mudaliar and Varathammal are the parents of the said Moorthy, the petitioner K.Kumar is the brother of the said Moorthy, the petitioners Kasturi and Gowri are the sisters of the said Moorthy and the petitioners Palani and Sampath Kumar are the husbands of Kasturi and Gowri respectively. He further submitted that even as per the cause-title given in the STC/MC.No.13 of 2013, the petitioners herein are residing at No.75, Bajanai Koil Street, Panchalaipattu Village, Sriperumpudur Post and Taluk, whereas the respondent herein gave her

residential address as No.4/47, Thiruvallur Street, Tamil Nadu Housing Board Quarters, Maduranthagam Town and Taluk. He further submitted that in the Divorce Petition and also in the maintenance case, the respondent herein has not stated that the petitioners herein have subjected her to any act of Domestic Violence. He further submitted that the petitioner Kasi Mudaliar is aged about 90 years and Varathammal is aged about 88 years and they have been purposely dragged to the Court with a view to harass them at their old age. He further submitted that the petitioners K.Kumar, Kasturi, Gowri, Palani and Sampath Kumar were added as respondents, only they happened to be close relatives of the said Moorthy. He further submitted that the petitioners Kasturi and Gowri were already married and they are living with their husbands separately and they were impleaded as respondents only to harass them. He further submitted that except the bald and vague allegations, no other material has been produced by the respondent to show that the petitioners have committed any Domestic Violence and therefore he prayed to quash the proceedings against the petitioners herein in STC/MC No.13 of 2013 on the file of the the Judicial Magistrate, Maduranthagam. The learned counsel for the petitioners in support of his contentions relied upon the decision in **"Ashish Dixit and Others /vs/ State of U.P and Another CDJ 2013 SC 042: 2013 (4) SCC 176"**.

5. Per contra, the learned counsel for the respondent has submitted that the petitioners herein are in-laws of the respondent and they caused cruelty, both physically and mentally and also retained the shridhana articles. He further submitted that since the petitioners herein have caused cruelty, they are liable to

pay a compensation of Rs.15,00,000/- to the respondent. He further submitted that for attracting the provisions of Protection of Women from Domestic Violence Act, 2005, an aggrieved person and the respondents need not reside in the shared house hold at the time of filing of the petition and if they lived at any point of time in a shared household itself is sufficient to invoke the provisions of the said Act. He further submitted that in the petition filed by the respondent, she has categorically stated that after marriage, all of them resided in the same house and therefore, the provisions of the aforesaid Act will attract and therefore, he prayed to dismiss the petitions.

6. In the typed set of papers filed by the petitioners, they have enclosed a copy of the petition filed by the respondent herein in H.M.O.P.No.25 of 2009 on the file of the Sub-Judge, Maduranthagam. In the said petition, only allegation made against the parents of the said Moorthy viz., Kasi Mudaliar and Varathammal is that they had ill-treated her with cruelty by abusing her as 'Malady'. Apart from the aforesaid allegation, no other allegation made in the said petition against other petitioners herein. In M.C.No.9 of 2010 also, the same allegation has been made. Except the aforesaid allegation, no other allegations have been made against other petitioners herein. So, it is clear that only as an afterthought, the respondent herein has filed the petition under Protection of Women from Domestic Violence Act making allegations against other petitioners herein.

7. Along with the petitions, the petitioners herein have filed a xerox copy of voters Identity Card of Gowri, Kasturi, Palani and Sampath Kumar. A perusal of the said voters Identity card would show that they are residing somewhere else and not in the address given in STC/MC No.13 of 2013.

8. In "**Ashish Dixit and Others /vs/ State of U.P and Another CDJ 2013 SC**", the Hon'ble Supreme Court in Paragraph Nos.2 to 5 has observed as follows:

" 2. *This appeal is directed against the judgment and order dated 05.07.2010 passed by the High Court of Judicature at Allahabad in Criminal Miscellaneous Application No.8358 of 2008. By the impugned judgment and order, the High Court has refused to quash the proceedings initiated against the petitioners by the respondent no.2-wife, under Section 12 of the Protection of women from Domestic Violence Act, 2005 (for brevity " the Act, 2005").*

3. *In the petition filed by respondent no.2, apart from arraying her husband and her parents-in-law as parties to the proceedings, has included all and sundry, as respondents. To say the least, she has even alleged certain actions said to have been done by the tenant whose name is not even known to her.*

4. *In a matter of this nature, we are of the opinion that the High Court at least should have directed that the petition filed by respondent no.2 be confined to her husband as also her parents-in-law and should not have allowed the impleadment of respondent nos.4 to 12.*

5. *In view of the above, while allowing this appeal in part, we quash the proceedings as against appellant nos.4 to 12 in Case No.240 of 2007. We direct the learned Chief Judicial Magistrate, Agra to*

proceed with the aforesaid case; only against the husband i.e., Shri Ashish Dixit, S/o.Padmakar Dutt Sharma, her father in law, Shri Padmakar Dutt Sharma, S/o.late Pt.Diwakar Dutt Sharma and Smt.Girja Dixit, W/o. Shri Padmakar Dutt Sharma, her mother in law".

9. As already pointed out that in the petitions filed by the respondent herein seeking divorce and maintenance, she has not made any allegation against the petitioners Kumar, Kasturi, Gowri, Palani and Sampath Kumar. She has made an allegation against her husband viz., Moorthy and his parents as they have scolded her by using the word 'Malady', whereas now in the petition filed by her under the Protection of Women from Domestic Violence Act for the first time, she has stated that all the shridhana properties are with the petitioners herein and her husband. Further, she has stated that the petitioners Kumar, Palani and Sampath Kumar have taken the custody of the documents relating to Education and failed to return the same. Further, they beaten her indiscriminately, but the said allegations are not made either in the divorce petition or in the maintenance case. This Court is of the view that in view of the decision of the Hon'ble Supreme Court, the proceedings against the petitioners viz., Kumar, Kasturi, Gowri, Palani and Sampath Kumar are liable to be quashed. In so far as, the petitioners Kasi Mudaliar and Varathammal are concerned, this petition is dismissed. Considering their age, their personal appearance before the Trial Court is dispensed with. They should appear as and when required by the Trial Court.

12. In the result, Crl.OP.Nos.3340 and 3346 are allowed and Crl.OP.No. 7325 of 2014 is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

31.01.2019

Index:yes/No
Speaking order/Non-speaking order

vv



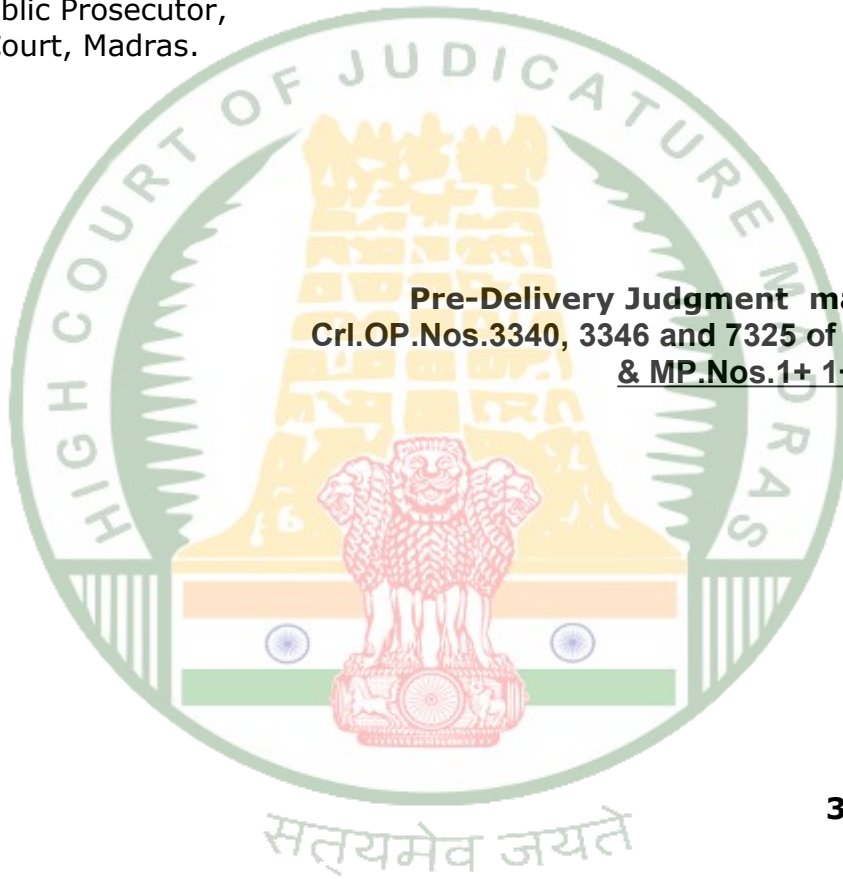
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P.RAJAMANICKAM., J.

VV

To

1. The Judicial Magistrate,
Maduranthagam
2. The Public Prosecutor,
High Court, Madras.



**Pre-Delivery Judgment made in
Crl.OP.Nos.3340, 3346 and 7325 of 2014
& MP.Nos.1+ 1+ 1 of 2014**

31.01.2019

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