

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2019

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.13949 of 2014
and M.P.No.1 of 2014 & M.P.No.1 of 2015

1.TekepatSatish Chandra Menon
2.Meenakshi Raghunath
3.Mrs.Radha Menon

... Petitioners

Vs.

Asha Panicker

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in C.C.No.29 of 2014 on the file of the learned IX Metropolitan Magistrate, Saidapet and quash the same.

For Petitioners : Mr.M.Mohamed Rafi

For Respondent : No appearance

O R D E R

The Criminal Original Petition has been filed to quash the proceedings in C.C.No.29 of 2014, on the file of the learned IX Metropolitan Magistrate, Saidapet.

2.The second petitioner is the wife of the first petitioner, the first petitioner is the husband and the third petitioner is the mother-in-law of the respondent. The marriage between A1/TekepatSatish Chandra Menon and the respondent Viz., Asha Panicker was solemnized on 11.02.1985. Thereafter, due to matrimonial disputes the respondent and her husband were living separately from the matrimonial home. Under these circumstances, the respondent herein filed a petition under Domestic Violence Act in C.C.No.29 of 2014, on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai and implicated the petitioners as parties in this petition and sought action as against them under Domestic Violence Act. The said C.C.No.29 of 2014 is pending for trial. At this stage, the petitioners prayed to quash the proceedings in C.C.No.29 of 2014.

3.Heard, the learned counsel appearing for the petitioners and there is no representation on the side of the respondent.

4.It is seen that the relief sought for by the respondent in the domestic violence case with regard to residential rights, compensation, etc., can be made and claimed as against her husband, who is already a party in that case. The second petitioner is the wife of the first petitioner, the first petitioner is the husband and the third petitioner is the mother-in-law of the respondent and they are living separately. As such, the protection order sought for by the respondent herein in the domestic violence case against the petitioners, based on the allegations, cannot be maintained. In view of the fact that the allegations of harassment meted out by the petitioners against the respondent itself seems to be false. While that being so, there cannot be any act of domestic violence as defined under Domestic Violence Act against petitioner. In the absence of the same, the proceedings as against petitioner cannot be maintained and consequently, the petitioner need not undergo the ordeal of facing a criminal trial.

5.The first petitioner and the respondent are the husband and wife. On perusal of the records would show that the first petitioner as well as the respondent filed a divorce petition in F.C.O.P.1821 of 2004, before the learned Principal Judge, Family Court, under Section 23 of the Hindu Marriage Act by mutual consent, the said petition was decreed in their favour. Even though, the respondent filed a Domestic Violence complaint against the petitioners after a period of nine years, i.e. in the year 2014.

6.The relevant portion of the order in F.C.O.P.1821 of 2004 dated 10.02.2005, passed by the learned Principal Judge, Family Court is extracted hereunder:

"The 1st petitioner is permitted to have the custody of son Udaya Krishna Menon. The 2nd petitioner is permitted to visit the son. If she desires to have the custody of son in future, he has agreed to give the son's custody and shall pay Rs.20,000/- per month as maintenance. The 1st petitioner has entrusted the life Insurance Corporation policies (360266170, 360266171, 360266172, 360266173 and 710173329) to the 2nd petitioner and she shall receive the amount on maturity of the said policies. The 2nd petitioner shall pay the premium if there is any default. Both the petitioners have agreed that they will not make any claim including maintenance against each other in future. Both the

petitioners have already exchanged their articles given at the time of their marriage.”

The learned counsel for the petitioners submitted that the first petitioner is continuously paying a sum of Rs.20,000/- per month to his son though he attained majority.

7.Considering the above facts and circumstances of the case, it is nothing but clear abuse of process of law. Therefore, the petitioners need not undergo the ordeal of trial in Domestic Violence complaint.

8.In view of the above, the Criminal Original Petition stands allowed and the proceedings in C.C.No.29 of 2014, on the file of the learned IX Metropolitan Magistrate, Saidapet is quashed. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

pam

To

1.The IX Metropolitan Magistrate
Saidapet, Chennai.
+1 CC to Mr.M.Mohamed Rafi, Advocate sr 32463.

सत्यमेव जयते

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