

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2019

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN
Crl.O.P.No.1727 of 2014 and
M.P.Nos.1 & 2 of 2014

1. T.K.Krishnan
2. T.K.Suriyaprakash ... Petitioners/Accused No.6&7
Vs.

1. The State of Tamil Nadu
represented by
The Protection Officer,
Domestic Violence Act,
District Social Welfare Office,
District Collector Office Complex,
Singaravelar Maligai,
8th Floor, Rajaji Salai,
Chennai.
2. S.Anitha ... Respondents/Complainant

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the record in C.C.No.6578 of 2013 on the file of the X Metropolitan Magistrate, Egmore, Chennai and quash the same insofar as the petitioners are concerned.

For Petitioners : Mr.V.Bhiman

For Respondents

For R1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This quash petition has been filed by the petitioners who are arrayed as Respondents 6 and 7 in C.C.No.6578 of 2013, pending on the file of the X Metropolitan Magistrate, Egmore, Chennai, filed by the second respondent herein under Section 12 of the Protection of Women From Domestic Violence Act, 2005.

2. The complaint had been filed against seven persons and the petitioner are arraigned as 6th and 7th respondents in C.C.No.6578 of 2013. The persons, who are impleaded as respondents in the above said case, by the 2nd respondent/ complainant are her mother-in-law S.Kasthuri, brothers-in-law T.C.Badrinath and T.C.Ravindranath, younger brother of the father-in-law of the 2nd respondent/complainant T.K.Srinivasan, sister-in-

law T.K.S.Bharathi, elder brother of the father-in-law T.K.Krishnan and the younger brother of the father-in-law of the 2nd respondent/complainant T.K.Suriaprakash.

2.1. The averments in the complaint lodged by the 2nd respondent/ complainant is that she is an Advocate and got married to one Harinath, son of S.Kasthuri on 24.08.2003 and after marriage, the 2nd respondent/ complainant settled at the house of her husband, who is also an Advocate and out of their wedlock, a male child was born to them. Her father-in-law, namely, Late.K.Chandran was an Advocate and also a Notary Public and her mother-in-law was an Administrator of a Driving School known as Om Driving School. Her husband was having two brothers and her father-in-law was having six brothers and out of them, T.K.Krishnan, T.K.Srinivasan and T.K.Suriaprakash were in touch with her father-in-law. Her brother-in-law, namely, Badrinath got married with one Dhanalakshmi during 2006 and thereafter, since he raised a dispute with regard to partition of the joint family property her father-in-law died on 04.07.2007 after suffering a heart attack. Thereafter, her another brother-in-law, namely, Ravindranath got married with one Anitha.

2.2. The further averment according to the 2nd respondent/ complainant is that her mother-in-law had tortured her frequently by demanding money from her with an instruction not to inform the same to her husband. But, at one stage of the issue, the 2nd respondent/complainant had informed the same to her husband and her husband had also advised his mother not to ask money from the 2nd respondent/complainant. On 24.09.2007, her mother-in-law had tortured her and obtained a sum of Rs.1,35,000/- from her for purchase of a Car for her brother-in-law, namely, Badrinath. Further, they gave tortures to her by cutting her dress and adding more salt in the food etc., and therefore, she got mental agony. In such circumstances, Dhanalakshmi wife of her brother-in-law Badrinath lodged a complaint in Crime No.2 of 2008, with regard to dowry harassment, as against the 2nd respondent/complainant, her husband and mother-in-law and also against her other relatives. In the complaint she had not made any allegation as against her husband Badrinath and the said case is pending on the file of X Metropolitan Magistrate Court, Egmore, Chennai, as C.C.No.3091 of 2009.

2.3. Further, according to the 2nd respondent/complainant, the brothers of her father-in-law, namely, T.K.Srinivasan, T.K.Krishnan, T.K.Suriaprakash (Petitioners herein) and her brother-in-law, namely, T.C.Badrinath are the prosecution witnesses and they threatened the 2nd respondent/complainant as

well as her husband by demanding ten lakhs rupees for not deposing evidence as against them in the said case. Subsequently, during January, 2011, the 2nd respondent/complainant gave a sum of Rs.30,000/- to her mother-in-law to settle the debts availed by her from the third parties. Subsequently, her mother-in-law went to the native village of her husband, namely, Thirukandalam without informing anybody about the same and settled there.

2.4. According to the 2nd respondent/complainant, her mother-in-law colluded with her sons and foisted false allegations as against her and her husband and also gave torture by sending obscene messages to her cellphone and also threatened her. Therefore, she lodged a complaint before the Cyber Crime Police, Egmore, where her brothers-in-law alone appeared for enquiry and they had also admitted the allegations levelled against them by the 2nd respondent/complainant. Subsequently, her mother-in-law lodged a complaint as against the 2nd respondent/complainant and her husband under the provisions of the Senior Citizen Act and on 15.03.2013, her mother-in-law gave an interview in Dinamani Newspaper with regard to an incident which had not taken place. Thereafter, on 16.09.2012, Badrinath came to the 2nd respondent/complainant's house in a drunken mood and attacked her as well as her husband and broken the glass panes fixed in her house by throwing stones. Therefore, they called the Police, but before the Police reached the spot, Badrinath had run away from the spot. Hence, the complaint.

3. The allegation raised by the 2nd respondent/complainant in Form No.I, as against the petitioners is that they had abused the 2nd respondent/complainant in filthy language and preferred a false complaint against the 2nd respondent/complainant and her husband and being a witness in the complaint conducted "Katta Panchayat" to compromise the matter. However, in Form-II, no relief had been sought for by the 2nd respondent/complainant as against both the petitioners, wherein monetary relief had been sought for against the other respondents in the complaint under the provisions of the Domestic Violence Act.

4. At this juncture, it is once again relevant to mention the relationship between the parties. The petitioners are brothers of the father-in-law of the 2nd respondent/complainant.

5. The learned counsel for the petitioners submitted that the petitioners are brothers of father-in-law and excepting the fact that they are related to the second respondent through her husband, being his uncle

they have at no point of time lived together in a shared household or had any domestic relationship with the 2nd respondent/complainant and that they cannot be brought under the definition of 'respondent' under the Act and as such the allegations against them also do not constitute acts of domestic violence under the Act and that the entire proceedings is nothing but an abuse of process of Court and a blatant misuse of the provisions of the Domestic Violence Act filed with an ulterior intention to harass them and to tarnish their image.

5.1. He further submitted that the dispute between the parties at any stretch of imagination cannot be brought within the ambit or definition of 'Domestic Violence' and that the 2nd respondent/complainant in order to settle scores in respect of some other family disputes had attempted to misuse and abuse the provisions of the Act by wrongly and willfully implicating them as respondents and that the entire reading of the complaint would go to show that they would nowhere come within the definition of the relevant provisions of the Act to bring them within the ambit of the Act to implead them as respondents.

5.2. The learned counsel further submitted that the petitioners and the 2nd respondent/complainant and her husband are all Advocates and that there are several legal disputes pending between the husband of the 2nd respondent/complainant on one side and her mother-in-law and other brothers-in-law on the other side and that the petitioners being Advocates and related to the family had rendered legal assistance to the pathetic widowed mother-in-law aged 65 years and that the husband of the 2nd respondent/complainant, who is happily living with the 2nd respondent/ complainant, had instigated his wife to initiate this false proceedings under the Domestic Violence Act against his mother, brothers and relatives to harass them and to restrain them from rendering assistance to the mother-in-law.

5.3. The learned counsel for the petitioners referred to the copies of the complaints lodged by the mother-in-law of the 2nd respondent/ complainant against her and her husband before various authorities and submitted that the proceedings under the Domestic Violence Act had been initiated only as a counter blast to silence them. The learned counsel to bring home the point that the dispute was absolutely not a case of Domestic Violence referred to the averment in the complaint that : "உடனே எனது கணவர் அவருடைய தாய் கஸ்தூரியை அழைத்து

ஏன் நீ எனக்குத் தெரியாமல் என் மனைவியிடம் மிரட்டி பணம் பறித்தாய் என் மனைவியிடம் நானும் அன்பாக குடும்ப வாழ்க்கை நடத்திக் கொண்டிருப்பது உனக்குப்

பிடிக்கவில்லையா என என கணவர் இனி பணம் கேட்கக்கூடாது என்று பலமுறை கண்டித்துள்ளார்." The learned counsel would further submit that the 2nd respondent/Complainant were enjoying a happy married life and that here husband had instigated the 2nd respondent/complainant to file the false case to settle other disputes pending in the family.

5.4. It is further submitted by the learned counsel for the petitioners that even taking the entire averments to be true for a moment, the 2nd respondent/complainant had not made out a case to invoke the provisions of the Domestic Violence Act and that the learned Magistrate had erroneously taken cognizance of the complaint and sent notice to the petitioners, who cannot at any point be brought within the definition of "respondents". The learned counsel further submitted that as far as the other respondents 4 & 5 in C.C.No.6578 of 2013 are concerned, this Court by an order dated 28.02.2018, in Crl.O.P.Nos.10011 and 7187 of 2014, quashed the said proceedings. Therefore, he sought for quashing the proceedings, as far as the petitioners are concerned, who are in the same footing.

6. Heard Mr.V.Bhiman, learned counsel appearing for the petitioners and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent. No one has appeared for the second respondent and the 2nd respondent/complainant who herself happens to be an Advocate, she also did not appear.

7. On perusal of complaint and documents, it is seen that on 14.07.2011 Mrs. Kasthuri, the mother-in-law of the 2nd respondent/defacto complainant lodged a complaint to the State Police Commissioner, against the 2nd respondent /complainant and her husband for having grabbed her house property and for eviction of them from her house property and for recovery of the same along with her belongings. Again on 28.12.2011, she submitted representation seeking action against them for having harassed and tortured her and forcefully made her to execute a mortgage deed dated 11.02.2008. Again on 10.10.2012, she had given a complaint to the Chief Justice of this Court for having harassed her and throwing her out of the house. Again on 29.11.2012, she had given a complaint to the Registrar Vigilance against the husband of the 2nd respondent/complainant requesting to take action in respect of having committed forgery of her signature. Further, T.K.S.Bharathy Anandraj has also filed a complaint before the Bar Council against the 2nd respondent/ complainant and her husband for having abused her. While the complaints filed by the mother-in-law against 2nd respondent were pending, the present complaint, which is sought to be quashed, has been filed by the 2nd respondent/complainant on 06.09.2013.

8. As far as the respondents 4 & 5 in C.C.No.6578 of 2013 are concerned, this Court held in the judgement reported in 2012 1 L.W. (Crl.) 360 in the case of T.K.Srinivasan and another Vs. The State as follows :-

"15. Now, whether the uncontroverted averments in the complaint in C.C.No.6578 of 2013 would make out a case and fall within the ambit of Domestic Violence Act. To bring the 2nd respondent/complainant within the ambit of the Domestic Violence Act, the averments should satisfy the following test:

1. Whether the 2nd respondent/complainant is an "Aggrieved Person" as defined under Section 2(a) of the Act;

2. Whether there was any "domestic relationship" between the 2nd respondent/ complainant and the petitioners/respondents as defined under Section 2(f) of the Act;

3. Whether the petitioners/respondents would fall within the meaning and definition of "respondent" under Section 2(f) of the Act; and

4. Whether the 2nd respondent/ Complainant and the petitioners/ respondents have lived under a "shared household" as per the definition of Section 2(s).

As per the Domestic Violence Act the definition of the words "Aggrieved Person", "Domestic Relationship", "Respondent" and "Shared household" are interlinked and interdependent and to make out a case for "Domestic Violence" the 2nd respondent/complainant should satisfy that the 2nd respondent/complainant is an "aggrieved person" having lived in "domestic relationship" with the "respondents" under a "shared household".

16. At this juncture, it is beneficial to refer to the relevant provisions of the Act:

"2. Definitions.- In this Act, unless the context otherwise requires, -

(a) "aggrieved person" means any woman who is, or has been, in a domestic

relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

...
...
...

(e) "domestic incident report" means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person;

(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

(g) "domestic violence" has the same meaning as assigned to it in section 3;

...
...
...

(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

...

(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

3. Definition of domestic violence.- For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

(a) harms or injuries or endangers the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injuries or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation 1.- For the purposes of this section, -

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise or which the aggrieved person requires out of

necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household

Explanation II.- For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration."

17. The term "domestic violence" encompasses variety of criminal offences. The term domestic violence covers inter family affairs which are generally between immediate family members. But not extended to family members who do not live under a shared common household. The term "domestic violence" has to be understood in the context of "domestic relationship and shared household" and therefore, the relief sought for are meaningful only against the persons with whom the aggrieved person shares a domestic relationship and a shared household. Admittedly the petitioners/ respondents and the 2nd respondent/complainant are not immediate family members and do not and have not lived under a shared household and thereby the relationship between them do not come within the

meaning of "domestic relationship". When that being so the the 2nd respondent/complainant cannot be brought under the definition of "aggrieved person" and the petitioners/respondents cannot be brought under the definition of "respondents" and that being so the allegations against the petitioners/respondents cannot be brought within the meaning of "domestic violence".

18. It has become unfortunate that in order to wreck vengeance or as a counter blast the 2nd respondent/complainant had impleaded distant relatives for the acts not covered under the domestic violence. Here is a case where there are litigations pending and more particularly complaints have been preferred by Mrs. Kasturi w/o Late Chandran who is the mother-in-law of the 2nd respondent/complainant against her own son who is the husband of the 2nd respondent/complainant and they are pending enquiry and adjudication. However, strangely and peculiarly in the complaint filed by the 2nd respondent/complainant under the Domestic Violence Act, her husband is not a party. It makes it abundantly clear that the 2nd respondent/complainant had been instigated by her husband to wreck vengeance against his widowed mother and her relatives who have helped her to take action for the harassment meted out to her.

19. The Hon'ble Supreme Court in State of Haryana v. Bhajan Lal, 1991 (1) R.C.R. (Criminal) 383 held as under:-

"In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide- o7 myriad kinds of cases wherein such power should be exercised:

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the un-controverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar en- grafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

We also give a note of caution to the

effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

20. Taking note of caution that power of quashing should be exercised very sparingly and with circumspection and that too in the rarest of rare cases, this Court considered that this is an illustrious case where the benevolent legislation intended to protect women in distress due to domestic violence has been misused and thereby it is clear that the criminal proceeding is manifestly attended with mala fide and the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the respondents with a view to spite them due to private and personal grudge. I hold that the proceedings pending in C.C.No.6578 of 2013, on the file of the X Metropolitan Magistrate, Egmore, Chennai is nothing but abuse of process of law."

9. In view of the above judgment, the petitioners/respondents are also entitle for same benefits, since they are also standing on same footing. In the result, the Criminal Original Petition is allowed and the proceedings in C.C.No.6578 of 2013, on the file of the X Metropolitan Magistrate, Egmore, Chennai so far as it relates to the petitioners stands quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

rts

To

1. The X Metropolitan Magistrate Court,
Egmore, Chennai
2. The Protection Officer,
Domestic Violence Act,
District Social Welfare Office,
District Collector Office Complex,
Singaravelar Maligai,
8th Floor, Rajaji Salai,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.Bhiman , Advocate SR.No. 13124

CrI.O.P.No.1727 of 2014
and M.P.Nos.1 & 2 of 2014

A.SK(05/04/2019)



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