

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED: 04.04.2019

CORAM:  
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No. 11087 of 2017  
and  
Crl.MP.Nos. 7326 & 7327 of 2017

1. V.Nagarajan
2. K.Velayutham
3. V.Geetha Velayutham
4. S.Uma Sundaram

... Petitioners

Vs.

B.P.Thangaveni

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to proceedings in D.V.A.No.4 of 2017 on the file of the Judicial Magistrate Court-III, Coimbatore and quash the same and allow the above criminal original petition.

For Petitioners: Mr. P.K.Sabapathi

For Respondent : Mr.H.Rajasekar

O R D E R

This petition is directed as against the proceedings in D.V.A.No.4 of 2017, filed by the respondent herein, on the file of the learned Judicial Magistrate No.III, Coimbatore.

2. The first petitioner is the husband and the petitioners 2 to 4 are in-laws of the respondent and the marriage between the first petitioner and the respondent was solemnized on 02.02.2014. Thereafter, due to matrimonial disputes the respondent and her husband were living separately from the matrimonial home. Under this circumstance, the respondent herein filed a petition under Domestic Violence Act in D.V.A. No.4 of 2017 on the file of the Judicial Magistrate No.III, Coimbatore and implicated the petitioners as parties to the petition and sought action as against them under Domestic Violence Act. The said D.V.A.4 of 2017 is pending for trial. At this stage, the petitioners herein who are the husband and in-laws of the respondent pray to quash the proceedings in D.V.A.No.4 of 2017.

3. Heard Mr.P.K.Sabapathi, learned counsel for the petitioners and Mr.H.Rajasekar, learned counsel appearing for 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 petitioners 2 to 4 herein are only in-laws 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 these petitioners 2 to 4 /in-laws, based on the allegations, cannot be maintained, in view of the fact that the allegations of harassment meted out by the petitioners 2 to 4 against the respondent itself seems to be false. While that being so, there cannot be any act of any domestic violence as defined under Domestic Violence Act against these petitioners 2 to 4. In the absence of the same, the proceedings as against these petitioners 2 to 4 cannot be maintained and consequently, the petitioners 2 to 4 need not undergo the ordeal of facing a criminal trial.

5. Insofar as the first petitioner/husband is concerned, the learned counsel appearing for the petitioners submitted that the complaint itself is barred by limitation under Section 468 of Cr.P.C. It is seen that the respondent had left the matrimonial home in the year 2014 itself. Thereafter she lodged complaint and the same was registered in Crime No.7 of 2015 for the offences under Sections 406, 498A of IPC and the charge sheet also filed. The trial Court viz., the learned Judicial Magistrate, Ambattur has taken cognizance in C.C.No.25 of 2016, as against the petitioners herein and the same is pending for trial. It is also seen that the first petitioner filed divorce petition before the learned Sub Court, Nagercoil in H.M.O.P.No.114 of 2015, for dissolution of marriage and the same was transferred to the file of the Sub Court, Coimbatore and it is pending for trial. Thereafter the present complaint has been filed by the respondent under the Protection of Women from the Domestic Violence Act.

6. In this regard the learned counsel appearing for the petitioners relied upon the judgment reported in 2012 CrI.L.J.309 in the case of Inderjit Singh Grewal Vs. State of Punjab & Anr., which reads as follows:-

"24. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 Code of Criminal Procedure, that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Sections 28 and 32 of the Act 2005 read with Rule 15(6) of The Protection of Women from Domestic Violence Rules, 2006 which make the provisions of Code of Criminal

Procedure applicable and stand fortified by the judgments of this Court in *Japani Sahoo v. Chandra Sekhar Mohanty* AIR 2007 SC 2762; and *Noida Entrepreneurs Association v. Noida and Ors.* (2011) 6 SCC 508.

25. In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions of the Act 2005 is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the court. Undoubtedly, for quashing a complaint, the court has to take its contents on its face value and in case the same discloses an offence, the court generally does not interfere with the same. However, in the backdrop of the factual matrix of this case, permitting the court to proceed with the complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same."

7. In view of the above, Sections 28 and 32 of Protection of Women from Domestic Violence Act, 2005 r/w Rule 15(6) of the Protection of Women from Domestic Violence Rules 2006, which make the provisions of Cr.P.C. applicable. Therefore, the respondent ought to have been filed the complaint within a period of one year from the date of the incident.

8. Admittedly, the respondent left the matrimonial home in the year 2014 and thereafter after filing so many proceedings, she had filed this complaint in the year 2017 only. Therefore, the above judgement squarely applicable to the case on hand and it cannot be sustained as against the first petitioner also.

9. Accordingly, this Criminal Original Petition stands allowed and the proceedings in DVA.No.4 of 2017, on the file of the Judicial Magistrate Court-III, Coimbatore is hereby quashed. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

rts

To

1.The Judicial Magistrate Court-III,  
Coimbatore.

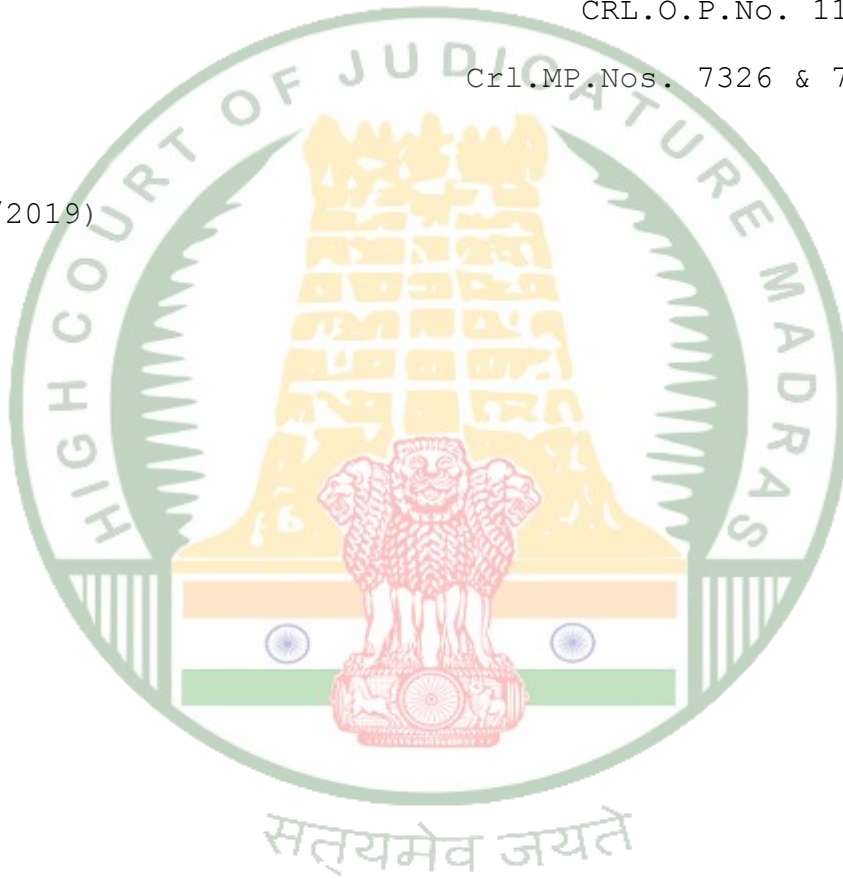
2.-do- Thro' The Chief Judicial Magistrate,  
Coimbatore.

+1cc to Mr.H.Rajasekar, Advocate, S.R.No.34126

CRL.O.P.No. 11087 of 2017  
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VD (CO)

RRS (09/05/2019)



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