



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.04.2019

Delivered on : 30.07.2019

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P.(MD)No.2270 of 2016

and

Crl.M.P.(MD)No.1173 & 1174 of 2016

WEB COPY

D.Suresh Kumar

... Petitioner/Respondent

Vs.

1.Rajasundari

2.S.Lakshminarayanan (Minor)

... Respondents/ Petitioners

[Minor 2nd respondent represented by his natural guardian,
mother and next friend - 1st respondent herein]

Prayer: Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in M.C.No.33 of 2014 on the file of the learned Judicial Magistrate No.1, Tanjore and quash the same.

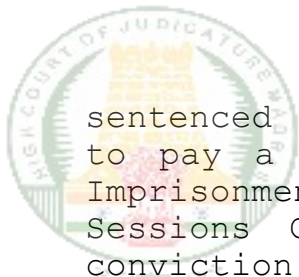
For Petitioner : Mr.P.R.Thiruneelakandan

For Respondents : Mr.D.Rameshkumar

ORDER

This Criminal Original Petition has been filed by the petitioner to quash the proceedings pending against him in M.C.No.33 of 2014, on the file of the learned Judicial Magistrate No.1, Tanjore. The first respondent herein has filed the said application in M.C.No.33 of 2014 before the learned Judicial Magistrate No.1, Tanjore, under the Domestic Violence Act for herself and for her minor child / second respondent herein.

2. According to the petitioner, the marriage between himself and the first respondent was solemnized on 28.03.2007 at Tanjore and after the marriage, within few months, there was a strained relationship and the first respondent lodged a criminal complaint against him and his family members before the All Women Police Station, Tanjore. The same was registered in Crime No.9 of 2008 for the offence punishable under Section 498(A), 294(b) IPC and Section 4 of the Dowry Prohibition Act. The Inspector of Police, All Women Police Station, Tanjore had also filed a final report as against the petitioner and others, before the learned Judicial Magistrate No.1, Tanjore and the same was taken on file in C.C.No.76 of 2009. In conclusion of the trial, the learned Judicial Magistrate, Tanjore found this petitioner was guilty under Section 4 of Dowry Prohibition Act and the third accused was guilty under Section 4 of Dowry Prohibition Act r/w Section 109 IPC and convicted and



sentenced them to undergo Rigorous Imprisonment for six months and to pay a fine of Rs.2000/-, each, in default to undergo Simple Imprisonment for three months. On appeal before the Principal Sessions Court, Tanjore in Criminal Appeal No.47 of 2013, the conviction and sentence was reversed and the appeal was allowed by the learned Principal Sessions Judge, Tanjore, by order dated 28.03.2014.

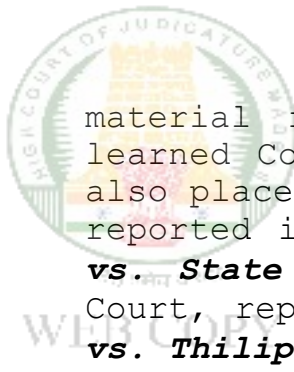
3. In the meantime, the petitioner had filed a divorce application in HMOP.No.87 of 2008 before the Sub Court, Tambaram to dissolve the marriage held between the petitioner and the first respondent and the same was allowed and an ex-parte decree of divorce was also granted in favour of the petitioner on 17.06.2010. The application filed by the first respondent to set aside the ex-parte decree dated 17.06.2010 was also dismissed by the Sub Court, Tambaram, in I.A.No.200 of 2011 on 05.02.2014 and therefore, the decree of divorce dated 17.06.2010 has been confirmed.

4. The first respondent had filed an application for maintenance before the learned Judicial Magistrate No.1, Tanjore under Section 125 Cr.P.C., for herself and for the second respondent in M.C.No.8 of 2011 and the same was allowed in favour of the first respondent by order dated 06.06.2014 with a direction to the petitioner to pay a sum of Rs.5000/- as maintenance to the first and second respondents. Even after the order of maintenance granted by the learned Judicial Magistrate No.1, Tanjore, in order to harass the petitioner, the first respondent had filed this application under the Domestic Violence Act before the very same Magistrate for maintenance and other reliefs, in M.C.No.33 of 2014, by suppressing the decree of divorce granted by the Sub Court, Tambaram on 17.06.2010 and the maintenance ordered in favour of the respondents 1 & 2 in M.C.No.8 of 2011.

5. Heard Mr.P.R.Thiruneelakandan, learned Counsel appearing for the petitioner and Mr.D.Rameshkumar, learned Counsel appearing for the respondent.

6. The learned Counsel for the petitioner would submit that the marriage between the petitioner and the first respondent was dissolved by the competent Court and the decree of divorce dated 17.06.2010 is still in force and there is no relationship between the petitioner and the first respondent as husband and wife, as such, a divorcee is not entitled to claim the relief under the Domestic Violence Act, except the monetary relief in the nature of maintenance, which was also granted in M.C.No.8 of 2011. He would further submit that the first respondent has approached the Court by suppressing the decree of divorce granted in favour of the petitioner by the Sub Court, Tambaram, in HMOP.No.87 of 2008, dated 17.06.2010 and the order of maintenance granted in their favour by the learned Judicial Magistrate No.1, Tambaram, on 06.06.2014, as

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material facts, is not entitled for any relief. Therefore, the learned Counsel prays for allowing the present application. He had also placed reliance upon the decision of the Hon'ble Supreme Court, reported in **CDJ 2011 SC 819**, in the case of **Inderjit Singh Grewal vs. State of Punjab and another** as well as the decision of this Court, reported in **CDJ 2018 MHC 4503**, in the case of **S.Suriya Devi vs. Thilip Kumar**.

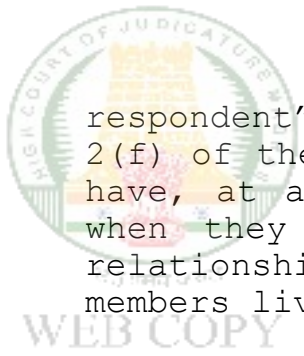
7. Per contra, Mr.D.Rameshkumar, learned Counsel appearing for the respondents would submit that the decree of divorce dated 17.06.2010 was passed as an ex-parte decree when the first respondent's Counsel fail to appear before the Court due to Advocates' Boycott. Thereafter, the application filed to set aside the ex-parte decree with a delay of 24 days was dismissed by the Sub Court, Tambaram. Since the first respondent was struggling to meet the ends of day, she was not in a position to follow up the litigations with due diligence and with great difficulty, she filed an application to set aside the order passed by the Sub Court, Tambaram in I.A.No.200 of 2011 in HMOP.No.87 of 2008 before this Court in CRP.No.3237 of 2015, but she could not defend the same effectively, in view of her financial condition.

8. The learned Counsel further submitted that it is true that the first respondent had filed an application for maintenance in M.C.No.8 of 2011 under Section 125 Cr.P.C., wherein, it was only a sum of Rs.5000/- was awarded as maintenance, with which, she could not survive and meet out the medical expenses and other expenses for the second respondent and therefore, has filed this application under Sections 12, 18, 19, 19(1)(a), 19(8), 20 & 22 of the Domestic Violence Act before the learned Judicial Magistrate No.1, Tanjore, in M.C.No.33 of 2014, not only for maintenance, but also for other reliefs.

9. This Court paid it's anxious consideration to the rival submissions made by the learned Counsel on either side and also perused the documents placed on record.

10. The contention of the petitioner is that in view of the divorce granted by the competent Civil Court on 17.06.2010, there is no relationship between the petitioner and the first respondent as husband and wife, as such, she is not entitled to file the application under the Domestic Violence Act.

11. As per Section 12 of the Domestic Violence Act, an aggrieved person or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under the Domestic Violence Act. Aggrieved person is defined under Section 2(a) of the Act that "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". The term domestic relationship is defined under Section 2(f) of the Act that "a relationship between two person 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".

12. Section 3 of the Act deals with the definition of domestic violence and for better appreciation, the same is extracted hereunder:

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

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(a) harms or injures 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, injures 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."

13. Admittedly, the petitioner has married the first respondent on 28.03.2007 and the second respondent was born to them, out of the wedlock. According to the petitioner, he is also paying a maintenance of Rs.5000/- per month towards the expenses of the respondents, as per the orders of the Judicial Magistrate No.1, Tanjore, in M.C.No.8 of 2011. It is the contention of the first respondent that she was also subjected to the acts of domestic violence and therefore, as an aggrieved person under the Domestic Violence Act, she is entitled to file an application under Section 12 of the Domestic Violence Act. In fact, it is true that the first respondent has been in a domestic relationship with the petitioner, as such, she is entitled to maintain a petition under the Domestic Violence Act, when there are specific overtacts.

14. The complaint in M.C.No.33 of 2014 was filed by the first respondent before the concerned Court on 13.06.2014. However, in the said complaint, the orders passed in HMOP.No.87 of 2008 dated 17.06.2010; in I.A.No.200 of 2011 dated 05.02.2014; and in M.C.No.8 of 2011 dated 06.06.2014 were not mentioned by the first respondent. But, she was also persuading as against the order passed in I.A.No.200 of 2011 in HMOP.No.87 of 2008 by filing CRP.No.3237 of



2015 before this Court, however, the same was dismissed on 17.03.2016.

15. It appears from the records the first respondent has not effectively defended her case in HMOP.No.87 of 2008 and I.A.No.200 of 2011. HMOP.No.87 of 2008 was dismissed for default and not an order passed on merits. I.A.No.200 of 2011, which was filed to set aside the ex-parte decree with a delay of 24 days, was also dismissed, when hundreds of days of delay are condoned by the Courts.

16. Be that as it may, this Court is of the view that the non-mentioning of the earlier orders by the Counsel in the application does not deprive the rights of the first respondent in claiming the reliefs under the Domestic Violence Act, when there are specific allegations. As discussed supra, the complaint in M.C.No.33 of 2014 is not filed for maintenance, but also for other reliefs. As has been held in the earlier portion of this order, the first respondent has been in a domestic relationship with the petitioner, as such, she can maintain a petition under Domestic Violence Act and therefore, for all the reasons stated supra, this Court is not inclined to entertain this quash application.

17. In the result, this Criminal Original Petition is dismissed. It is open to the petitioner to raise all the grounds before the trial Court, including the earlier orders passed in favour of both the parties. The learned Judicial Magistrate No.1, Tanjore, is directed to consider all the grounds raised by the respective parties and pass appropriate orders, as expeditiously as possible, uninfluenced by any of the findings rendered by this Court in this petition. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To
The Judicial Magistrate No.1, Tanjore.

+1CC to Mr.P.R.Thiruneelakandan, Sr.No.78692.

Order made in
Crl.O.P. (MD)No.2270 of 2016
and
Crl.M.P. (MD)No.1173 & 1174 of 2016
30.07.2019