



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.10.2019

PRONOUNCED ON : 22.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Cr1.O.P. (MD) .No.962 of 2019

and Cr1.M.P. (MD) Nos. 401 & 402 of 2019

Sivapugal ... petitioner/Respondent

Vs.

1. V. Meena
2. Minor Dhaswanth Bharathi
3. Minor Gowshik Akshay ... Respondents/Petitioners

(The respondents 2 & 3 are minors represented by their mother and Natural Guardian 1st respondent herein).

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records in a case in D.V.P. No.116 of 2016 before Additional Mahila Judicial Magistrate Court, Madurai and quash the same.

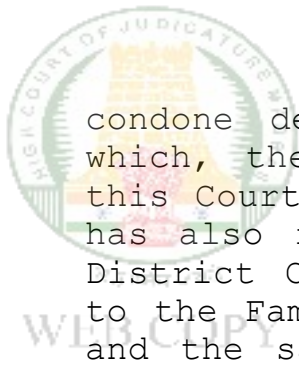
For petitioner : Mr.M. Jothibas

For Respondents : Mr.V. A. Dhana Aravindh Balaji
for M/s.Dhana Law Association

ORDER

The Criminal Original Petition has been filed to quash the proceedings in D.V.P. No.116 of 2016 before Additional Mahila Judicial Magistrate Court, Madurai.

2. The learned counsel for the petitioner would submit that the petitioner is the husband of the first respondent herein. On 06.07.2003 the marriage took place between them and due to their wedlock they gave birth to two male children. While being so, there was misunderstanding between them and as such they are living separately from the year 2010-2011 onwards. In fact, the first respondent has sent legal notice to the petitioner in respect of their family dispute. Thereafter, on 07.06.2010 she has also filed a petition for divorce in HMOP No.193 of 2010 on the file of the II Additional Sub Court, Madurai. However, the divorce petition was dismissed by order, dated 25.04.2014 as against which, the first respondent has also preferred an appeal before the Principal District Court, Madurai along with the



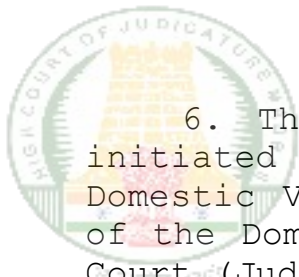
condone delay petition and the same was allowed. As against which, the petitioner has preferred CRP No.2691 of 2018 before this Court the same is pending. In the meanwhile, the petitioner has also filed GWOP No.31 of 2011 on the file on the Principal District Court, Virudhunagar and subsequently it was transferred to the Family Court, Madurai and renumbered as GWOP No.4 of 2012 and the same was partly allowed. While being so, in the year 2016, the present impugned domestic violence complaint has also been filed by the first respondent after a period of six years from their separation. It is also clearly barred by the divorce petition filed by the respondent on 07.06.2010 and therefore, the entire proceedings is nothing and abuse of process of law.

3. The learned counsel appearing for the petitioner relied upon the Judgment in the case of ***Inderjit Singh Grewal Vs. State of Punjab and another in 2011[12] SCC 588*** and the same was followed in the Judgment reported in ***2019 [2] MWN (Cr.) 401, V. Nagarajan and others Vs. B.P. Thangaveni.***

4. Per contra, the learned counsel for the respondents would submit that the respondents are aggrieved persons under Section 2 (a) of Domestic Violence Act. The complaint is very much maintainable, since the first respondent is being aggrieved person. He further submitted that though family disputes are pending between the petitioner and the first respondent, the first respondent was not provided any maintenance and ill-treated the first respondent till today. Therefore, she has filed a complaint seeking direction under Section 18 of the Domestic Violence Act, restraining the petitioner from any way of harass the first respondent in her work place and any other place and also sought for compensation for continuous ill-treatment, harassment and cruelty to the respondents. Therefore, the complaint is not at all barred by limitation. To file a complaint cause of action arose on 09.05.2015. When the first respondent was working in college, Police officials came to her work place and enquired whereabouts and directed her to hand over minor child. Therefore, there was continuous harassment by the petitioner and as such it is not barred by limitation. In support of his contention, he also relied upon the following Judgments;

- 1. AIR 2015 SUPREME COURT 2605, Shalini Vs. Kishor & Others.**
- 2. 2017 Crl. LJ 615, Yogesh Anantrai Bhatt Vs. State of Gujarat.**
- 3. By order of this Court, dated 18.06.2014 passed in Crl.O.P. No.3211 of 2014, S.Z. Zuhhairullah Vs. Farhara Begum.**

5. Heard Mr.M. Jothibas, learned counsel appearing for the petitioner and Mr.V. A. Dhana Aravindh Balaji for M/s.Dhana Law Association, learned counsel appearing for the respondents.



6. The petitioner is a sole respondent in the proceedings initiated by the respondent in DVOP No.116 of 2016 under the Domestic Violence Act, seeking relief under Sections 18, 22 & 28 of the Domestic Violence Act on the file of the Additional Mahila Court (Judicial Magistrate Cadre), Madurai.

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7. The petitioner got married with the first respondent on 06.07.2003 and also gave birth two children. Due to misunderstanding between them, they got separated in the year 2010. Thereafter, the first respondent has issued a notice and also filed divorce petition in HMOP No.193 of 2010 on 07.06.2010 on the file of the II Additional Sub Court, Madurai. Though, it was dismissed as against which, the first respondent has preferred an appeal along with condone delay petition. As against the order passed in the condone delay petition, the petitioner has preferred revision in CRP No.2691 of 2018 and the same is pending before this Court. It is also seen that the petitioner also filed GWOP No.31 of 2011 before the Principal District Court, Virudhunagar and it was partly allowed in favour of the petitioner. Therefore, it is clear that the first respondent separated from the petitioner and living separately from the year 2010. After a period of six years, the first respondent has filed a complaint under the Domestic Violence Act and the same has been taken cognizance in DVOP No.116 of 2016 on the file of the Additional Mahila Court (Judicial Magistrate Cadre), Madurai. The only point for consideration is that the limitation.

8. In this regard, the learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court **reported in 2011 SCC 588, Inderjit Singh Grewal Vs. State of Punjab and another** held as follows:

"32. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 CrPC, that the complaint could be filed only within a period of one year from the date of incident seem to be preponderous in view of the provisions of Sections 28 & 32 of the 2005 Act Read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006 which make the provisions of Cr.P.C applicable and stand fortified by the judgments of this Court in Japani Sahoo V. Chandra Sekhar Mohanty and NOIDA Entrepreneurs Assn. V. NOIDA".

9. He is also relied upon the Judgment in **2019(2) MWN (Cr.) 401, V. Nagaraja and others Vs. B.P. Thangaveni** held as follows :

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 <http://www.judis.nic.in> 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



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."

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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 <http://www.judis.nic.in> 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.

10. Therefore, it is made clear that though Domestic Violence Act is Special Act, in view of the provisions under Sections 28 & 32 of the Domestic Violence Act read with Rule 15(6) of the Protection of Women from Domestic Violence Act, 2005 which make the provisions of Cr.P.C. applicable. Therefore, the provisions under Section 468 of Cr.P.C. comes into play and as such the complaint under the Domestic Violence Act ought to have filed within a period of one year from the date of incident. In the case on hand, the first respondent got separated from the petitioner from the year 2010. Thereafter, so many proceedings are pending between the petitioner and the first respondent before the Family Court, Madurai. Further, it is also seen that the prayer sought for in the complaint itself shows that the first respondent is living separately and sought for injunction as against the petitioner restraining him from any way of harassing the first respondent in her residence, work place and any other places. Further, she also prayed for compensation of Rs.5 lakhs towards harassment and emotional distress.

11. Therefore, the complaint is barred by limitation as contemplated under Section 468 of Cr.P.C. That apart, the proceedings initiated by the first respondent in the year 2010 is still pending and as such the present complaint is nothing but clear abuse of process of Court. Therefore, the petitioner need not go for ordeal of the trial.

<https://hcservices.e2019.gov.in/hcservices/> Far as the judgments relied upon by the respondents



are held in respect of the issue arising out of execution of direction issued under Domestic Violence Act. As such, these are not helpful to the case of the respondents.

13. Accordingly, the Criminal Original Petition is allowed and the proceedings in D.V.P. No.116 of 2016 on the file of the Additional Mahila Court (Judicial Magistrate Cadre), Madurai is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Judge,
The Additional Mahila Court,
(Judicial Magistrate Cadre),
Madurai.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.DHANA LAW ASSOCIATES, Advocate (SR-93650[F] dated 22/10/2019)

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-93749[F] dated 23/10/2019)

Order in

Crl.O.P.(MD).No. 962 of 2019

22.10.2019

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