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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

CrI.O.P (MD) No.12942 of 2015

and

M.P. (MD) Nos.1 and 2 of 2015

1.Maria Ravi Sahaya Raj

2.Bowlin Belsiya

3.Celin Mary

4.Selvam

5.Ravindran

... Petitioners/Respondents/Accused

Vs.

Sawariammal

... Respondent/Petitioner/Complainant

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.122 of 2015 on the file of the Judicial Magistrate No.II, Srivilliputhur and quash the same.

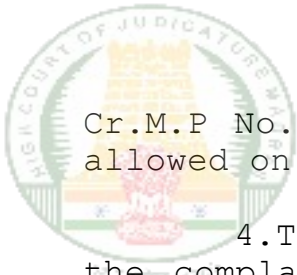
For Petitioners : Mr.M.Vivekanandan

ORDER

This criminal original petition has been filed for quashing the proceedings in C.C No.122 of 2015 on the file of the Judicial Magistrate No.II, Srivilliputhur. The respondent is the complainant. The case of the respondent is that she filed Cr.M.P No.8535 of 2011 before the very same court under the provisions of the Protection of Women from (Domestic Violence) Act, 2005 and that the same was allowed on 22.10.2012 and since the same has been breached, the instant complaint was filed. To quash the same, the petitioners filed this Criminal Original Petition.

2.Though the respondent has been served and her name is also printed in the cause list, there is no appearance or representation on her behalf. The learned counsel appearing for the petitioners reiterated the contentions set out in the memorandum of grounds and wanted this Court to quash the impugned proceedings.

3.I carefully considered the said contentions and also went through the materials on record. A mere look at the original complaint filed in Cr.M.P No.8535 of 2011 would indicate that the complainant herein had arrayed only the first petitioner herein namely, Maria Ravi Sahaya Raj as the sole respondent. In other words, the petitioners 2 to 5 herein were not the respondents in



Cr.M.P No.8535 of 2011.It is true that Cr.MP No.8535 of 2011 was allowed on 22.10.2012.

4.The question that arises for my consideration is whether the complaint filed by the complainant herein under Section 31 of the aforesaid Act is maintainable against the petitioners 2 to 5 also. Section 31 of the Act reads as follows :

"31.Penalty for breach of protection order by respondent.—(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2)The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who has passed the order, the breach of which has been alleged to have been caused by the accused.

(3)While framing charges under sub-section (1), the Magistrate may also frame charges under section 498-A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions."

5.The Central Act (43 of 2005) provides for more effective protection of the rights of women who are victims of violence of any kind occurring within the family. Section 17 of the Act confers the right to reside in a shared household. Section 18 enables the Magistrate to pass a protection order in favour of the aggrieved person and prohibit the respondent from committing the following acts :

"(a)committing any act of domestic violence;

(b)aiding or abetting in the commission of acts of domestic violence;

(c)entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

(d)attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

(e)alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of



the Magistrate;

(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

(g) committing any other act as specified in the protection order."

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Section 19 states that the Magistrate may pass residence order and its scope can range from what has been set out in Section 19(1)(a) to (f). The Magistrate may also impose additional conditions for ensuring the safety of the aggrieved person or any child of such aggrieved person. Section 20 confers jurisdiction on the Magistrate to direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to the loss of earnings and the medical expenses. Section 21 pertains to passing of custody orders. Section 22 is about compensation orders.

6. The question that arises for the consideration of this Court is two fold :

(a) Whether the complainant can invoke Section 31 of the Act even for breach of orders passed under Sections 17, 19 to 22,

(b) Whether the petition filed under Section 31 of the Act is maintainable even against a person who was not shown as a respondent in the original petition filed by the complainant.

7. I must straightaway refer to a judgment of the Madras High Court reported in **2015 1 MLJ Cr1.549 (S. Jeeva Ashok vs Kalarani)**. It is not necessary to discuss the factual matrix obtaining in the said case. The scope of Section 31 of the Act fell for consideration in the said case. The learned Judge of this Court chose to approve the view taken by the Rajasthan High Court in *Kanchan v. Vikramjeet Setiya* reported in 2013 Cr1.L.J. 85 in the following terms :

"20. In *Kanchan v. Vikramjeet Setiya* reported in 2013 Cr1.L.J. 85, (Rajasthan High Court), the facts of the case would disclose that the petitioner therein-wife filed an application for maintenance under Sections 12 and 23 of the DV Act and the husband was directed to pay the maintenance and on account of non-compliance, the wife filed a petition under Section 31 of the DV Act for execution of the breach of order of monetary relief. The said petition was dismissed and challenging the same, she filed a Criminal Miscellaneous Petition on the file of Rajasthan High Court. The Rajasthan High Court, after dealing with exhaustively the provisions contained in the DV Act, has held that Section 31 of the DV Act with



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regard to the breach of order of monetary relief, is not maintainable, as Section 18 of the DV Act does not deal with monetary relief and also taken into consideration Section 20 of the DV Act, which, entitles a Magistrate to direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the Court a portion of the wages or salaries or debt due or payable to the person concerned and observed that only in a case of salaried person, such kind of orders can be passed. As regards the enforcement of the order granting monetary relief, in paragraph 10 of the decision, the Rajasthan High Court observed that the Court would have to fall back-on to the procedure provided under Section 28 of the DV Act, which lays down that the Court shall be governed by Cr.P.C., in relation to the proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 as well as for the offence under Section 31 of the DV Act and for execution of the order, a resort has to be had to the general provisions of Cr.P.C. The Rajasthan High Court, citing the said reasons, has dismissed the petition filed by the wife.

21. In *Kanaka Raj v. State of Kerala* and another reported in 2010 CrI.L.J.(NOC) 447 (Ker.), it has been held that only if the order passed by the Magistrate is a protection order or an interim protection order, the Magistrate can direct registration of case and investigate the same under Section 31 of the DV Act and even if award is passed by Lok Adalat unless made in terms of Section 18 of the DV Act, it cannot be a protection order or interim protection order and breach of it will not attract the offence under Section 31 of the DV Act.

.....

27. In the light of the above said provisions of the DV Act and the decisions rendered by the Rajasthan High Court as well as Kerala High Court (cited supra), this Court is of the view that the said order cannot be construed as a protection order and therefore, it is not enforceable under Section 31 of the DV Act."

8. Such an issue arose for consideration of the Hon'ble Division Bench of the High Court of Madhya Pradesh at Jabalpur in ***Surya Prakash vs. Smt. Rachna (2018) 0 CrI.LJ 2545***. The questions of law to be answered were framed in the following terms :

?"(i) Whether non-payment of maintenance allowance can be treated to be a 'breach of protection' or 'interim protection order'? If it is not a breach of said orders, whether Section 31 of the DV Act can be invoked ?

(ii) Whether any other breach of any provision



of the DV Act, which does not fall within the ambit of 'protection order' or 'interim protection order', can be a basis of invoke Section 31 of the Act ?

(iii) Whether the order passed in Sunil @ Sonu v. Sarita e Chawla (Smt.) reported in 2009 (5) MPHT 319, is in accordance with the Scheme of the DV Act ?"

9.The judgment of the Rajasthan High Court in **Kanchan v. Vikramjeet Setiya** reported in **2013 Cr1.L.J. 85** as well as that of **Jeeva Ashok vs. Kalarani**, were pressed into service by the petitioners' counsel. The Hon'ble Division Bench of the Madhya Pradesh High Court in the aforesaid decision referred to the statutory scheme and also the judgment of the Supreme Court reported in **(2016) 10 SCC 165 (Hiral P.Harsora vs. Kusum Narottamdas Harsora)** whereby Section 2(q) of the Act defining as to who is "respondent" was partially struck down. It then goes into a scholarly discussion on purposive interpretation in law. The views of Justice Holmes, Julius Stone and Dean Roscoe Pound are highlighted and thereafter, the Hon'ble Division Bench holds that the orders passed by the Single Benches of the other High Courts do not lay down the correct law in as much the definition of "domestic violence" which includes the economic abuse has not been considered.

10.After reading the judgment of the Hon'ble Division Bench of the Madhya Pradesh High Court, I am reminded of a story occurring in Hindu Mythology. When Shiva and his divine consort Parvathi were gifted a unique fruit of wisdom by Sage Narada, both Ganapathy and Karthikeya were vying for it. A competition between the two was announced. Who ever circles the world first, would be given the fruit. The moment the terms of the competition were announced, Karthikeya mounted on his peacock and took off in an instant. After completing the journey, when he went to his parents, he saw that Ganapathy had already consumed the fruit. Karthikeya exclaimed that it was unjust and unfair. Karthikeya wondered as to how Ganapathy was able to finish before him because Ganapathy at no point of time overtook him. Then, he realised that Ganapathy simply went around his parents and that was equal to circling the entire world.

11.I feel like citing this story because the answer to the question already lies in Rule 15 (7). Rule 15(7) of the Protection of Women from Domestic Violence Rules, 2006 reads as follows :

"15.Breach of Protection Orders.-

(1) ..

(2) ..

(3) ...

(4) ...

(5)

(6) ...

(7)Any resistance to the enforcement of the orders of



the Court under the Act by the respondent or any other person purportedly acting on his behalf shall be deemed to be a breach of protection order or an interim protection order covered under the Act."

The sub-rule states that by a legal fiction, any order that may be passed under the Act whether it is residence order or compensation order or custody order or maintenance order will be deemed as a protection order. Therefore, for breach of any order of the court under the Acts, prosecution under Section 31 of the Act will certainly lie.

12.The learned counsel appearing for the petitioners primarily contended that in as much as the petitioners 2 to 5 herein were not shown as respondents in the original petition, they could not be shown as accused in the complaint filed under Section 31 of the Act. It is true that the petitioners 2 to 5 herein are not parties to the order made in Cr.MP No.8535 of 2011. But, I have to reject the objection as regards the maintainability in view of the Rule 15(7). The said sub-rule talks about the resistance to the enforcement order not only by the respondent but also by any other person purportedly acting on his behalf. Section 31 and Section 32 of the Act will have to be read together. While Section 31(1) employs the expression "respondent", Section 31(2) and Section 32(2) refer to the offence committed by "the accused". Therefore, reading Section 31 of the Act along with Rule 15(7), I have to come to the conclusion that the impugned prosecution is very much maintainable.

13.But then, the question arises whether the respondent is justified in arraying the petitioners 2 to 5 herein as accused in her complaint filed under Section 31 of the Act. I am of the view that the contest has to be essentially between the first petitioner and the respondent. Even though the occurrence is said to have taken place on 09.01.2015, the respondent herein filed the complaint only after a lapse of four months. Even though she claims to have lodged the complaint the very next day, ie., 10.01.2015, representation under registered post was sent only on 11.02.2015. It is not the case of the respondent that during the intervening period, there was any obstruction from the petitioners 2 to 5. The order which is alleged to have been breached was passed on 22.10.2012. Even according to the respondent, from 22.10.2012 till 09.01.2015, there was no resistance to the said order from the petitioners 2 to 5 herein. Taking note of the over all facts and circumstances, I am of the view that continuance of the impugned prosecution as regards the petitioners 2 to 5 herein is not warranted and quashing the same alone would serve the ends of justice. In this view of the matter, the impugned proceedings are quashed as regards the petitioners 2 to 5.



14.The criminal original petition stands partly allowed.
Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

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To

The Judicial Magistrate No.II, Srivilliputhur.

+1 CC to M/s.M.VIVEKANANDAN, Advocate (SR-98133[F] dated 14/11/2019
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AP(01/07/2020) 7P 3C