



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.09.2019**

CORAM:

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

Crl.O.P. (MD)No.10183 of 2018

and

Crl.M.P. (MD)Nos.4554 and 4555 of 2018

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S.Mohaideen Pitchai

...Petitioner / Respondent

-Vs-

Bairose Banu

... Respondent / Petitioner

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to quash the D.V.O.P.No.3 of 2018 on the file of the Judicial Magistrate No.I, Tirunelveli.

For Petitioner : Mr.D.Nallathambi

For Respondent : Mr.R.Gandhi

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in D.V.O.P.No.3 of 2018 on the file of the learned Judicial Magistrate No.I, Tirunelveli.

2. The petitioner is the husband of the respondent and the marriage between the petitioner / S.Mohaideen Pitchai and the respondent Viz., Bairose Banu was solemnized on 19.02.1984. 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 Sections 12, 18 and 19 of Protection of Women from Domestic Violence Act 2005, in D.V.O.P.No.3 of 2018, on the file of the learned Judicial Magistrate No.I, Tirunelveli. The said D.V.O.P.No.3 of 2018 is pending for trial. At this stage, the petitioner herein, who is the husband of the respondent, prayed to quash the proceedings in D.V.O.P.No.3 of 2018.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4. The Hon'ble Apex Court in the Judgment in Crl.A.No.579 of 2019 dated 02.04.2019 in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies



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in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

5. In view of the dictum laid down by the Hon'ble Apex Court in the above referred Judgment, this Criminal Original Petition is dismissed. Since the impugned proceedings in D.V.O.P.No.3 of 2018, is pending from the year of 2018, it would be appropriate to direct the trial Court to complete the trial within a period of three months from the date of receipt of a copy of this order. The petitioner / husband of the respondent is directed to appear before the trial Court on the next hearing date, failing which, the respondent is at liberty to approach this Court.

6. In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD I)

// True Copy //

Sub Assistant Registrar(CS)

vsd

To

The Judicial Magistrate No.I,
Tirunelveli.

+1 CC to M/s.R.GANDHI, Advocate (SR-89255[F] dated 25/09/2019)

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-89349[F] dated
25/09/2019)

CrI.O.P.(MD)No.10183 of 2018

and

CrI.M.P.(MD)Nos.4554 and 4555 of 2018

24.09.2019

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