



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 01.04.2019

PRONOUNCED ON : .07.2019

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P.(MD)No.16201 of 2017

and

CRL MP(MD)No.10737 of 2017

WEB COPY

1.Balachandar

2.Nagammal

... Petitioners/Respondents

Vs.

Malathi

... Respondent/Petitioner

Prayer: Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in DVOP No.7 of 2017 pending on the file of the Judicial Magistrate Court, Cheranmadevi and quash the proceedings insofar as it relates to petitioners/respondents 2 and 3.

For Petitioners : Mr.TSR. Venkataramana

For Respondent : No appearance

ORDER

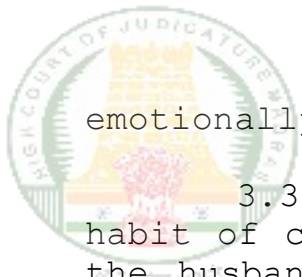
Seeking to quash the proceedings in DVOP No.7 of 2017 on the file of the Judicial Magistrate Court, Cheranmadevi, this Criminal Original Petition has been filed by the respondents 2 and 3 therein.

2.The respondent filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005, before the learned Judicial Magistrate Court, Cheranmadevi, mainly praying for shared household and return of gold jewels by her husband.

3.The case of the respondent before the learned Magistrate in the said DVOP is as follows:

3.1.The marriage between the respondent and one Balakumar, the son of the 2nd petitioner was solemnised on 27.08.2006. At the time of marriage, the respondent's parents gave 10 sovereigns of jewels and 5 sovereigns of chain, bracelet and ring to her husband and required household articles.

3.2.After the marriage the respondent and her husband were living in Kallidaikuruchi. Ever since the marriage the husband of the respondent sometimes behaved well and sometimes behaved



emotionally and harassed her by beating and using filthy words.

3.3.The husband was working at Tiruppur and he was in the habit of consuming alcohol. Within three months from the marriage the husband got the jewels of the respondent under the guise of starting electrical shop and had not returned the same so far. While so, after seven months from the marriage, the respondent went to her parents house for delivery and she delivered a female girl and after the childbirth, she returned to Kallidaikuruchi and the husband came to Kallidaikuruchi and behaved as a person of unsound mind and beaten her for no reason.

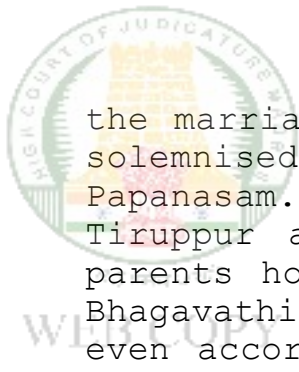
3.4.While so, the wife of the 1st petitioner enquired the respondent whether Balakumar was behaving well and when the respondent asked the reason, she replied that before the marriage, he was behaving as a person of unsound mind and he was given treatment for six months in Bagavathi Amman Temple at Kerala and hence, the first child was named as Bagavathi.

3.5.The husband of the respondent often harassed her and had driven her from home and due which, she attempted to commit suicide. After that the husband went to Tiruppur for work and subsequently, second child also born to them. For the past seven years the husband and the respondent have been living separately. Occasionally the husband used to visit the respondent and the children, however, during that time too, he harassed the respondent and the children and when her parents came to their rescue, he caused blood injuries. Though the parents of the respondent requested these petitioners for reunion, they told that there is no assurance for their life and the husband often was intimidating the respondent and her family.

3.6.At this juncture, on 11.12.2016, the respondent had lodged a complaint before the All Women Police Station, Ambasamuthiram and since no action was taken, on 12.12.2016, she lodged a complaint before the Superintendent of Police, Tirunelveli and that complaint was also not acted upon and hence, she sent a complaint on 22.12.2016 by post, to the All Women Police Station, Ambasamuthiram and the Superintendent of Police, Tirunelveli District. However, even there was no action taken on her complaint. At this stage, the respondent had filed a complaint under Domestic Violence Act, in DVOP.No.1 of 2017 on the file of the learned Judicial Magistrate, Cheranmadevi.

4.As against the proceedings in the said DVOP, the petitioners have filed the present Criminal Original Petition, seeking to quash the same.

5.The learned Counsel for the petitioners submitted that



the marriage between the respondent Malathi and one Balakumar was solemnised on 27.08.2006, at Arulmighu Ulagamman Thirukoil, Papanasam. After the marriage the respondent joined her husband at Tiruppur and lived with him for seven months. She came to her parents house at Mukkoodal for delivery and a baby girl, namely, Bhagavathi was born and then, she never returned to Tiruppur and even according to her, her husband was visiting her in Mukkoodal and she became pregnant and delivered a second child, namely, Archana. The petitioner has been living in Mukkoodal for the past 11 years ,ie., from the date of her first pregnancy in the year 2007 and so, the allegation of the respondent that the husband has thrown her out of the matrimonial house is false. Even after first delivery, her husband was visiting her in Mukoodal and hence, she again became pregnant, which shows that the relationship between the respondent and her husband was not bad.

6.The allegations against her husband is that he became insane and hence, he used to beat her. Even assuming the same as true, the act of her husband is not a punishable offence, since the offence committed by an insane person is not a punishable offence under Section 84 of IPC.

7.There is no allegation levelled against the petitioners in the petition filed by the respondent and further the relief is also sought only from her husband and not from these petitioners. The allegations are levelled only against the husband and there is no allegation against her in-laws namely, the petitioners herein.

8.Further, the respondent has been living in Mukoodal and the 2nd petitioner has been living in Kallidaikuruchi and the 1st petitioner, who is a Police has been living in Tenkasi and working in Courtallam Police Station, which is 70 kms away. It is to be noted, even as per the averments in the complaint, at any point of time, the petitioners and the respondent have never lived together in a common residence.

9.The learned Counsel also placed reliance in the case of ***Rajesh Sharma and ors Vs State of Uttar Pradesh and Anr***, dated 27.07.2017 [Criminal Appeal No. 1265 of 2017], wherein a reference has been made to the statistics from the Crime Records Bureau (CRB) as follows:

"9.That according to Reports of National Crime Record Bureau in 2005, for a total 58,319 cases reported under Section 498A IPC, a total of 1,27,560 people were arrested and 6,141 cases were declared false on account of mistake of fact or law. While in 2009 for a total 89,546 cases reported, a total of 1,74,395 people were arrested and 8,352 cases were declared false on account of mistake



of fact or law."

10.The learned Counsel further submitted that he has spoken with the husband about his moral and legal obligations of maintaining the wife and children, the husband also expressed his willingness to accept his wife and his children and he also agreed to pay a sum of Rs.4,000/- as a token maintenance, but the respondent refused to accept the same.

11.The learned Counsel prayed that for the grounds raised above, the criminal original petition be allowed and the DVOP filed by the respondent be quashed.

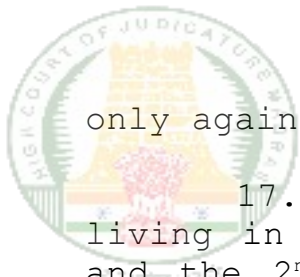
12.Despite notice served to the respondent and despite the name of the respondent printed in the cause list, today, she has not entered appearance either through an Advocate or in person.

13.Heard the learned Counsel for the petitioner and perused the materials placed on record.

14. A perusal of the materials reveals that the marriage between the respondent and one Balakumar was solemnised on 27.08.2006. They lived together for seven months and thereafter, the respondent went to her parental home at Mukkoodal for delivery. After the first child was born, she returned to her husband's home and the husband was residing in Tiruppur and subsequently, 2nd child was born to them. According to the respondent, often the husband harassed her and the children and she was driven to her parental home by the husband and they have been living separately for more than seven years.

15.However, in the petition filed before the learned Judicial Magistrate, the respondent had stated that a complaint was lodged on 11.12.2016 before the All Women Police Station, Ambasamudram and a complaint was lodged on 12.12.2016 before the Superintendent of Police, Tirunelveli and sent a complaint through post to both of them on 22.12.2016. But, the respondent has not come forward to put forth her case before this Court, for having roped the petitioners in the DVOP proceedings, by producing the copy of the complaints to the effect that there were allegations against these petitioners also.

16.It is to be noted that the respondent and the husband have been living separately for more than seven years and the complaint is said to have been lodged during the months of December '2016 and the petition in DVOP.No.7 of 2017 was filed on 28.06.2017. Further, a perusal of the petition filed by the respondent shows that there is no averment against these petitioners and all the allegations levelled by the respondent is



only against her husband.

17.Further, it is to be noted that the respondent was living in Mukkoodal and the 1st petitioner was living in Tenkasi and the 2nd petitioner was living in Kallidaikuruchi. Hence, the respondent and his husband have been living separately for more than seven years as on the date of the filing of the said DVOP and there is no reason stated for filing such petition after several years of the alleged incident said to have taken place.

18.In view of the above narration, this Court is of the view that when there is no averment or allegation as against these petitioners in the petition and no relief has been sought for from these petitioners and in the absence of any materials against the petitioners, roping them in the DVOP proceedings is an abuse of process of law and further, the respondent has not turned up to put forth her contention and hence, the DVOP proceedings against these petitioners is liable to be quashed.

19.In view of the above discussion, the proceedings in DVOP No.7 of 2017 on the file of the Judicial Magistrate, Cheranmadevi, is hereby quashed as against these petitioners herein and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To
The Judicial Magistrate,
Cheranmadevi.

Crl.O.P. (MD)No.16201 of 2017
01.07.2019

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