

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 06.01.2020
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.2291 of 2012
and
M.P.No.1 of 2012

1.K.Navaneethan
2.Uma Navaneethan
3.N.Yadhavaraj
4.N.Nagaraj
5.Pootreeswari

... Petitioners

Vs.

Abirami @ Arulmozhi

... Respondent

PRAYER: Petition filed under Section 482 of Cr.P.C., seeking to call for the records of the case in D.V.A.No.22 of 2011 on the file of the learned Judicial Magistrate No.6, Coimbatore and quash the same.

For Petitioners : Mr.A.R.Nixon

For Respondent : Mr.L.Mouli

O R D E R

This Criminal Original Petition has been filed seeking to call for the records of the case in D.V.A.No.22 of 2011 on the file of the learned Judicial Magistrate No.6, Coimbatore and quash the same.

2. The case of the petitioners is that the 3rd petitioner is the husband of the defacto complaint and the other petitioners are the father-in-law, mother-in-law, brother-in-law and sister-in-law of the defacto complaint. The marriage between the 3rd petitioner and the defacto complaint was solemnized on 01.02.2006 at S.N.Arangam Marriage Hall at Coimbatore and the marriage reception took place in Hotel Palm Groove at Chennai on 03.12.2006. After marriage they have started their life with the joint family along with the parents of the 3rd petitioner at

Adyar, Chennai. From the date of marriage the respondent did not co-operated with the petitioners in leading a peaceful matrimonial life and she had also not shown interest in having conjugal relation with the 3rd petitioner. The respondent had also left the matrimonial home on 27.04.2007 and went with her parents.

3. The learned counsel for the petitioners would further submit that thereafter, the 3rd petitioner filed a petition for divorce in FCOP.No.3266 of 2007 on the file of the I Additional Family Court, Chennai. Since, the defacto complaint/ respondent herein did not appear before the court, paper publication was ordered and the same was effected on 16.07.2007. There was no representation for the respondent, hence, she was set exparte and the petition for divorce was allowed on 13.05.2008. As against the said exparte order, the defacto complaint filed an application to set aside the order of divorce dated 13.05.2008 with an application in I.A.No.2706 of 2009 in O.P.No.3266 of 2007 to condone the delay of 404 days in filing the application for set aside. However, the trial court had dismissed her application to condone the delay in filing the set aside application on 23.07.2010. Thereafter, the respondent had filed a civil revision petition against the order dated 23.07.2010 before this court in CRP.No.3716 of 2010 and the said petition was also dismissed on 08.10.2014. After a lapse of 4 years, again the respondent had filed a Domestic Violence complaint before the learned Judicial Magistrate-VI, Coimbatore under Section 12 of the Protection of Women from Domestic Violence Act, 2005 in DVA.No.22 of 2011. Challenging the same, the present petition has been filed.

4. The learned counsel for the petitioners would also submit that though the divorce petition filed by the 3rd petitioner was allowed and the same was confirmed by this court in the civil revision petition, after a lapse of 4 years, again in respect of the very same allegation the respondent filing a domestic violence complaint is unsustainable. Further there is no specific allegation against the other petitioners except the 3rd petitioner. The other petitioners were implicated in this case only because of their relationship.

5. The learned counsel for the respondent would strongly object for quashing of the case in DVA.No.22 of 2011 in respect of the 3rd petitioner. In respect of the other petitioners, the counsel for the respondent has no serious objection for allowing this petition.

6. Considering the facts and circumstances of the case and considering the fact that respondent/ complainant made allegations only against the 3rd petitioner and in respect of the other petitioners there are no allegations. In the absence of any specific allegations as against the other petitioners, forcing them to face the trial is not proper. Hence, this petition is allowed in respect of the petitioners 1, 2, 4 and 5 and the DVA.No.22 of 2011 is quashed as against the petitioners 1, 2, 4 and 5. In respect of the 3rd petitioner, this criminal original petition is dismissed and the 3rd petitioner shall face the trial in DVA.No.22 of 2011. However, without being influenced by the observations made by this court, the trial court shall decide the matter independently as against the 3rd petitioner and complete the trial as expeditiously as possible.

7. The learned counsel for the petitioner would further submit that the appearance of the 3rd petitioner before the Trial Court may be dispensed with and would further submit that the 3rd petitioner is ready to appear as and when necessary arise.

8. The learned counsel appearing for the respondent concede to the request made by the learned counsel appearing for the petitioners.

9. In view of the above, this Court directs the learned Judicial Magistrate No.6, Coimbatore to expedite the trial in DVA.No.22 of 2011 and complete the same as early as possible. The appearance of the 3rd petitioner before the Trial Court is dispensed with. However, this order will not stand on the way of the Trial Court to insist for the appearance of the 3rd petitioner for receiving copies under Section 207 of Cr.P.C., framing of charges, questioning under Section 313 of Cr.P.C. and judgment and as and when the Trial Court feels it necessary.

10. This criminal original petition is allowed in the above terms. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

dsa

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To

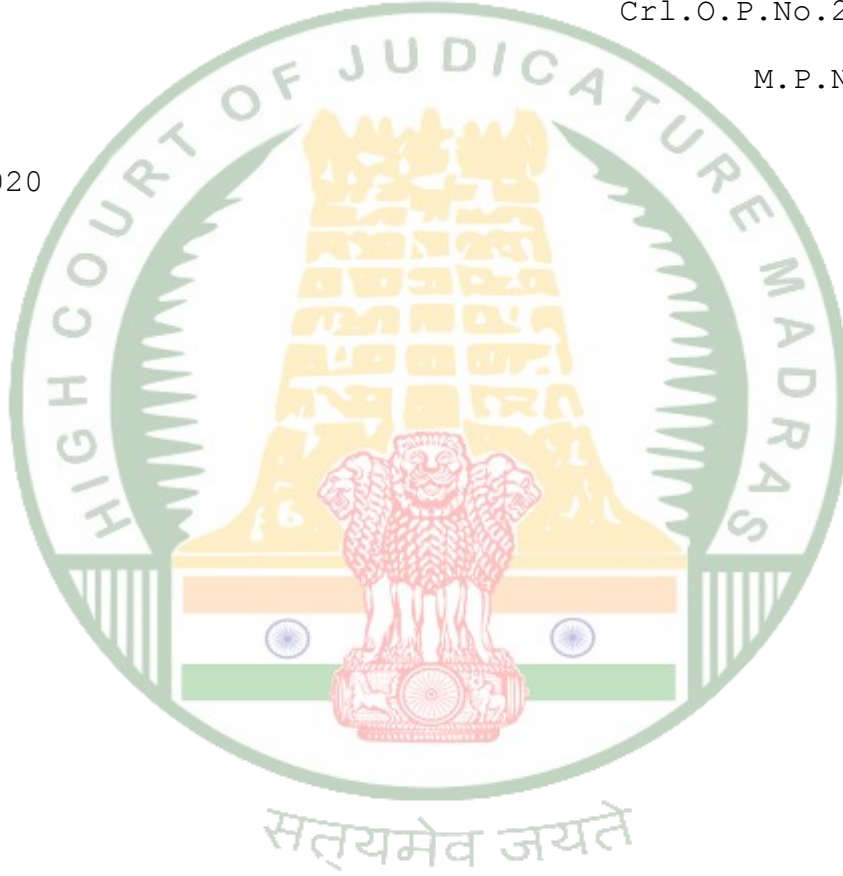
1.The learned Judicial Magistrate No.6,
Coimbatore.

2.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

+lcc to M/s.L.Mouli Advocate sr1446
+lcc to Mr.A.R.Nixon Advocate sr1198

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