

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.1141 of 2020
and Crl.M.P.Nos.719 & 720 of 2020

T.Vengatesan
S/o.Thiruvengadam,
Mp/1. 3rd Cross, 4th Main,
Ram Mohanpuram,
Bangalore - 560 021.
Now residing at
No.20/B, Gandhi Nagar,
Subramaniapuram,
Trichy - 620 020

.... Petitioner

.Vs.

P.Jayashree
W/o.T.Vengatesan,
Plot No.1, 3rd Cross,
Siva Sakthi Nagar,
28th Street,
Railway Car Shed Complex,
Power Line Road, Annanur,
Chennai - 600 109.

.... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records made in D.V.C.No.17 of 2019 on the file of the learned Judicial Magistrate, Ambattur under Sections 21 and 22 of Protection of Women from Domestic Violence Act and quash the same.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : No appearance

ORDER

This petition has been filed to quash the proceedings in D.V.C.No.17 of 2019 on the file of the learned Judicial Magistrate, Ambattur filed under Sections 21 and 22 of Protection of Women from Domestic Violence Act as against the petitioner.

2. The learned counsel appearing for the petitioner would

submit that the petitioner is the husband of the respondent herein. The marriage between the petitioner and the respondent took place on 21.08.1994. Due to their wed lock they gave birth to one son and one daughter in the year 1995 and 2002 respectively. Due to misunderstanding between them, the respondent deserted the petitioner and went out from the matrimonial home. Therefore, the petitioner was constrained to file a petition for divorce on the ground of cruelty in H.M.O.P.No.3165 of 2015 on the file of the II Additional Family Court, Chennai and the Family Court by an order dated 21.09.2016, dissolved the marriage between the petitioner and the respondent on the ground of cruelty. In fact, the respondent filed a petition to set aside the above exparte order in I.A.No.552 of 2017 along with condone delay petition. The said petition was dismissed for default by an order dated 08.08.2018.

2.1. He further submitted that the son of the petitioner completed his engineering graduation and he is employed in a private company. Insofar as his daughter is concerned, she is studying final year of her under graduate and the entire expenditure borne out by the petitioner only. The respondent left the matrimonial home in the year 2014 and after the period of five years, now the respondent filed this complaint under the Domestic Violence Act for various reason. Therefore, he sought for quashment of the entire proceedings.

3. Heard Mr.R.Sankarasubbu, learned counsel appearing for the petitioner. Though notice served and a counsel entered appearance, no one is appeared on behalf of the respondent either by person or through pleader.

4. The petitioner got married with the respondent on 21.08.1994 and due to their wed lock, they gave birth to one male and one female child in the year 1995 and 2002 respectively. Due to misunderstanding between them, the respondent left the matrimonial home in the year 2014. Thereafter the petitioner filed divorce petition on the ground of cruelty in H.M.O.P.No.3165 of 2015 on the file of the II Additional Family Court, Chennai. Before the Family Court the respondent did not appear and therefore the Family Court granted decree of divorce by an order dated 21.09.2016 on the ground of cruelty. In the year 2017, the respondent filed a petition to set aside the exparte order along with condone the delay of 133 days in I.A.No.522 of 2017. The said petition was also dismissed for default by an order dated 08.08.2018. Therefore, the decree of divorce become final. After the period of five years from the date of her leaving the matrimonial home in the year 2019, the respondent filed this complaint under the Domestic Violence Act for various relief.

5. Admittedly, the son of the petitioner completed his engineering graduation and he employed in a private company. As far as his daughter is concerned, she is doing her college final year and the petitioner borne out all the college expenditure in respect of his children. In this regard it is relevant to cite the order dated 04.04.2019 passed by this Court in Crl.O.P.No.11087 of 2017, in the case of V.Nagarajan and ors Vs. B.P.Thangaveni, which reads as follows:-

"6. In this regard the learned counsel appearing for the petitioners relied upon the judgment reported in 2012 Crl.L.J.309 in the case of Inderjit Singh Grewal Vs. Sate of Punjab & Anr., which reads as follows:-

"24. Submissions made by Shri Ranjit Kumar 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 offence, the court generally does not interfere with 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."

The Hon'ble Supreme Court of India held that under Sections 28 and 32 of the Act 2005 r/w Rule 15(6) of the Protection of Women

from Domestic Violence Rules, 2006 which make the provisions of the Code of Criminal Procedure applicable. The above judgment is squarely applicable to the case on hand since the respondent left the matrimonial home in the year 2014 itself. The respondent ought to have been lodged complaint within a period of one year from the date of incident.

6. Further the petitioner also obtained decree of divorce from the respondent herein by an order dated 21.09.2016 in H.M.O.P.No.3165 of 2015 on the file of the II Additional Family Court, Chennai. After the period of five years, the respondent filed this impugned complaint under the Domestic Violence Act, only to harass the petitioner. Further the petitioner is ready and willing to borne out all the expenditures in respect of his daughter. Considering the above facts and circumstances, this Court feels that the impugned complaint lodged by the respondent cannot be sustained as against the petitioner and it is liable to be quashed.

7. In view of the above discussions, this Criminal Original Petition stands allowed and the proceedings in D.V.C.No.17 of 2019 on the file of the learned Judicial Magistrate, Ambattur, is hereby quashed. However the petitioner shall maintain his daughter, who is doing her final year graduation till her marriage. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(L.A)

//True Copy//

Sub Assistant Registrar

To

The Judicial Magistrate,
Ambattur.

+1cc to Mr.R.Sankarasubbu, Advocate, Sr.No.31389

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rr ii (03/12/2020)