

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.22037 of 2013
and
MP.Nos.1 & 2 of 2013

1.V.Senthilraghavan

2.M.Veeraraghavan
(died)

3.M.Navaneedham

4.V.JayanthiPetitioners/Respondents

Vs.

S.Sujatha Respondent/ complainant

Prayer:

Petition filed under Section 482 of Cr.P.C., seeking to call for the records in STC No.422 of 2013 on the file of the learned Judicial Magistrate No.I, Tiruvannamalai and quash the same by allowing this criminal original petition.

For Petitioners: Mr.N.Manokaran

For Respondent : Mr.S.Suresh, Legal Aid Counsel

ORDER

This Petition is filed by the petitioners who are the respondents in STC No.422 of 2013, pending on the file of the learned Judicial Magistrate No.I, Tiruvannamalai, seeking the relief against them under Domestic Violence Act.

2. The petitioners are the family members viz., Junior paternal uncle of, grand mother and mother of the respondent/ estranged husband. The respondent herein filed a complaint dated 21.03.2013 before the Protection Officer, Tiruvannamalai to take action against the petitioners herein under the provisions of the Domestic Violence Act, 2005, who after enquiry, forwarded the domestic enquiry report to the learned Judicial Magistrate-I, Thiruvannamalai, based on the report, the above case came to be instituted. Pending disposal of the said petition, the petitioners have come forward with the present petition seeking to quash the same.

3.The brief facts of the complaint is that the marriage between the first petitioner and the respondent had taken place on 09.11.2000 and it was a love marriage. The first petitioner and the respondent were studying in the same college during the years 1995 to 1999, both of them are qualified physiotherapist, they fell in love which was accepted by their parents, thereafter, marriage was performed. After marriage, they were blessed with two female children who are aged about 10 years and 5 years respectively as on the date of filing the petition.

3.1. Immediately, after the marriage, the first petitioner demanded a sum of Rs. 1 lakh for setting up a clinic and thereafter, further demand continued on various occasions, cash to the tune of Rs.14 lakhs has been given to the first petitioner. The jewels which were given, at the time of marriage, was also pledged by the first petitioner and used for his own purpose. The first petitioner's demand was consistent and their relationship soured. The second petitioner/junior father of the first petitioner, the third petitioner /mother of the second petitioner and the fourth petitioner is the mother of the first petitioner, all these petitioners 2 to 4 abetted the first petitioner in subjecting the respondent to cruelty and in demand of dowry.

3.2. It is further alleged that after the marriage, the first petitioner and the respondent were living in the ground floor and the petitioners 2 and 3 were living in the first floor of the same house. They were sharing common household. According to fourth petitioner, she is living in Pondicherry and taking care of her mother, aged about 92 years and used to visit the residence of respondent's house frequently at Erode and whenever she visited the house of respondent, she instigated the first petitioner to harass the respondent.

3.3. During the month of December 2012, the first petitioner had asked for gold chain of the respondent, for the purpose of purchasing the property at Kangeyam. The respondent gave her chain to him, and requested that the property to be purchased in the joint name of the first petitioner and the respondent, which was not liked by the first petitioner and he started threatening her. During the matrimonial life she was subjected to physical cruelty on several occasions.

3.4. In continuation to the harassment, on 21.12.2012, the first petitioner pushed the respondent into the toilet and assaulted her, hearing the shout of respondent, her daughter shouted at first petitioner. At that time, the fourth petitioner further instigated the first petitioner to continue his act, further the respondent was continued to be threatened by the first petitioner over phone, hence the respondent unable to further face any assault, had gone to the nearby temple, where she met her family friend, who informed her

parents and thereafter on 22.12.2012, the parents of the respondent had come in presence of the common family friend reconciliation was held, though the first petitioner agreed to behave properly, he seldom followed the same.

3.5. On 23.01.2013, the first petitioner assaulted the respondent for not giving the locker key, for the purpose of taking out the jewels of the respondent. The respondent informed him that she would also accompany him, and the same was not liked by the first petitioner. Thereafter he had left for the job, taking the locker key and her mobile phone. The respondent after search, when enquired with the first petitioner was informed that the articles are with him and asked her to come to the clinic and the respondent after sending her children to school, went to the clinic, where she was ill-treated and thereafter the first petitioner had taken the respondent to the All Women Police Station, Erode and made her wait, made a false complaint to the police authorities. Thus the harassment and cruelty meted out to the respondent by the first petitioner aided by other petitioners 2 to 4 continued unabated and unable to bear any further, the respondent left to her parents place with her children.

3.6. Thereafter, on 21.03.2013, a complaint was lodged before the Social Welfare Officer, seeking for protection for her children, maintenance for herself and her children and protection for her job, to continue her profession at Erode and properties not to be alienated.

3.7. Based on the complaint, the Social Welfare Officer conducted enquiry. During the course of enquiry, the first petitioner gave a detailed statement against the respondent, since explanation given was not convincing and finding that the respondent was in need of protection order under Domestic Violence enquiry, the same was forwarded to the Court. Thereafter, the learned Judicial Magistrate-I, Thiruvannamalai ordered summons to the petitioners, against which the present quash petition is filed by the petitioners.

4. Learned counsel appearing for the petitioner contended that the first petitioner and the respondent had love marriage and hence there is no question of demand of any dowry, any harassment or cruelty. Admittedly the first petitioner and the respondent along with their two children were living in the ground floor of the house, which as a separate family and at no point of time, the other petitioners and the respondent had shared the common household. The first petitioner and the respondent were carrying on their profession, the first petitioner was taking care of the children and the respondent. In the mean time the father of the respondent herein was suffering from Paralytic stroke and he needed nursing and care. Hence the respondent wanted the first petitioner to move his family and practice to

Thiruvannamalai for the purpose of, living with the parents of the respondent. Since, the first petitioner had built-up a decent practice, near his area, it was not possible to suddenly shift his profession to Thiruvannamalai and his future would be come questionable. This was not both liking of the respondent. The respondent was adamant to shift to Thiruvannamalai to stay along with her parents. In order to achieve this, the respondent had given false complaint against the entire family members of the first petitioner.

4.1. The second petitioner herein is the senior advocate, practising at Erode and the third petitioner is the mother of the second petitioner and they are living separately in the first floor and at no point of time have connection with the cruelty as alleged by the respondent. Likewise, the fourth petitioner is the mother of the first petitioner who is residing at Erode, the petitioners 2 to 4 never shared common household and the allegations made against the petitioners are imaginary and to cause harassment, they have also been implicated as accused in this case. Earlier the respondent had lodged a complaint with All Women Police Station, Erode whereas, both the first petitioner and the respondent agreed the compromise and started living together.

4.2. During the enquiry, it was found that there was no demand for dowry and harassment, thereafter, again on 18.03.2013, within the period of three months, once again another complaint was lodged by the respondent to the All Women Police Station, Thiruvannamalai, who enquired and found the complaint to be false and it was also closed on the ground that there is no truth in the complaint of the respondent.

4.3. Hence the respondent filed the present complaint before the social welfare officer with same complaint which were not entertained by the police, the first petitioner is even today willing to take back the respondent and her children into the matrimonial home. It is the respondents attitude and the behaviour which caused such a situation and the petitioners are not responsible of the present state of the respondent.

4.4. Further he submitted that as far as the petitioners 2 to 3, they had no domestic relationship with the respondent and they have no point of time, shared common household and all the allegations made by the respondent are wild, imaginary and fanciful. He would further submit that the third petitioner is aged person of around 80 years who is suffering from cancer and she is taking treatment. Therefore, the learned counsel for the petitioners prayed this Court to quash the petition pending against the petitioners.

5. Heard the submission made by learned counsel for the petitioners.

6. On earlier occasion i.e., on 07.02.2020, this Court, considering the private notice ordered by this Court, being returned with an endorsement 'un-served', this Court ordered paper publication. Pursuant to the directions of this Court, paper publication was also effected and, thereafter, the matter was listed on 17.02.2020 and the name of the respondent was printed in the cause list. Despite the same, there was no representation on behalf of the respondent. Despite service of notice and paper publication the respondent has not taken any steps either to engage a counsel or to appear in person to defend the case. Therefore, it appears that the respondent has no interest to defend the present case. Hence, this Court appointed that Mr.S.Suresh, as Legal Aid counsel for the respondent, so that the case can be decided on merits and this matter was again ordered to be listed on 12.03.2020.

7. It is reported that the second petitioner is dead.

8. Learned Legal Aid counsel appearing for the respondent submitted that it is admitted by the first petitioner that the 2nd and 3rd petitioners were living in the same house at the first floor and as could be seen from the statement given by the first petitioner during enquiry on 16.04.2013 before the Social Welfare Officer. Further from his statement he admitted about the stormy relationship between the first petitioner and the respondent which prove there is no happiness between them and the respondent was subjected to cruelty and harassment follows. Further at this stage of trial, questioning the veracity of the averments its truthfulness or otherwise would affect the trial and the averments have to be proved during the trial and not at this stage aborting the case at initial stage, is not permissible, there are specific allegations against the petitioners. The submission of the first petitioner that he is willing to take back the respondent and the children back into the family is only a ploy to escape from the case.

9. Admittedly from the year 2013 to till date, the respondent and the children were not been taken care by the first petitioner. He had not provided any moral or material support. The domestic violence act is benevolent act to protect the rights of the women against the domestic violence. This is the case where the first petitioner had subjected the respondent to domestic violence not only physical but also psychologically, the demand for getting money from her parents were persistent to fulfil the same she was subjected to physical assault. On one such occasion, Respondent was smothered with pillow but for the intervention of the neighbours she would have been killed, the petitioner lodged a complaint before the All Women Police Station was not acted upon since the second petitioner being an advocate, successfully used all his influence and both the complaints were closed.

10.The first petitioner was greedy and demanded dowry received around Rs.14 lakhs and he had purchased all the properties in his name and failed to take care of the respondent and children. The respondent after the marriage from the year 2000 had been putting up with the first petitioner for the past 13 years, taking into consideration the welfare and future of her two daughters and thereafter, unable to bear the harassment and cruelty she had left the matrimonial home during the year 2013. However, he would submit that as against the petitioners 1 to 4, allegations are to be proved by letting in evidence and at this stage, it would not be appropriate to quash the proceedings against them. Accordingly he prays for dismissal of the petition.

11.This Court considered the rival submissions and perused the materials available on record.

12.On perusal of the records, it is admitted that the marriage between the first petitioner and the respondent is a love marriage and it took place with the consent of both parents in the year 2000. Afterwards, they have lived happily for the last 13 years as husband and wife and during the marriage, they were blessed with two girl children. Earlier two complaints given to the All Women Police station at Erode as well as Thiruvannamalai, were closed.

13. It is further admitted that the second and third petitioner were living in the first floor independently and the second petitioner is no more and the third petitioner is aged about 80 years with terminal cancer and the fourth petitioner is residing at Pondicherry and she visited very often. Further, the protection order and relief sought by the aggrieved person/respondent is only against the first petitioner.

14. It is noted that only with a view to harass the petitioners 2 to 4, the present petition under the Domestic Violence Act has been instituted. the absence of the respondent in spite of notice clearly shows that the respondent is not intent to rebut the case of the petitioners. from the above the only inference that could be drawn is in favour of the petitioners. Further, this Court perused the complaint and no substantial allegations against the petitioners 2 to 4 and the allegations are vague.

15. In the above circumstances, this Court is of the view that the present petition for quashment of the proceedings deserves to be allowed in respect of third and fourth petitioners. The second petitioner is reported dead, the case against second petitioner abates.

16. Accordingly, the complaint in STC No.422 of 2013 on the file of the learned Judicial Magistrate No.I, Thiruvannamalai is hereby quashed in respect of third and

fourth petitioners alone the case against second petitioner stands abated however, in respect of first petitioner, there are some allegations found in the complaint. Hence this court is not inclined to quash the proceedings in STC No.422 of 2013 on the file of the learned Judicial Magistrate No.I, Tiruvannamalai. Accordingly dismissed in respect of first petitioner.

17. This Court appreciates the efforts taken by Mr. S.Suresh, learned legal aid counsel in this case .

18. With the above lines, this criminal original petition is partly allowed. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

To
The Judicial Magistrate No.I, Tiruvannamalai.

+1 cc to M/s.N.Manokaran,advocate,sr.22323.

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