

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.22571 of 2015
and M.P.Nos.1 & 2 of 2015

1.Kamalam,
Wife of Shanmugasundaram

2.C.P.Shanmugasundaram,
Son of Palaniappan

3.Vijaya,
Wife of Sampathkumar

4.Sampathkumar,
Son of C.P.Shanmugasundaram ... Petitioners

Versus

Surya Prabha,
D/o.Shyamalan ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in D.V.A.No.2 of 2015 on the file of the learned Judicial Magistrate, Avinashi and quash the same.

For Petitioners: Mr.V.V.Sairam

For Respondent : MR.C.S.Saravanan

ORDER

This petition has been filed to quash the proceedings as against the petitioners/accused 2 to 5 in D.V.A.No.2 of 2015 on the file of the learned Judicial Magistrate, Avinashi.

2. Earlier, on 29.09.2020, when the matter was taken up for consideration, this court passed the following order:

" The learned counsel for the petitioner submitted that the respondent has filed a domestic violence case in D.V.A.No.2 of 2015 against her estranged husband viz., Karthikeyan and the petitioners herein. The petitioners are the in-laws of the respondent. The petitioners 1

and 2 are aged about 73 years and 63 years while the petitioner was filed in the year 2015 and they are living in Coimbatore. The said Karthikeyan who is Software Engineer, was staying in Bangalore due to his employment. The petitioners are no way connected in the domestic violence offence as alleged by the respondent.

2. The learned counsel for the respondent submitted that the said Karthikeyan filed a divorce petition on the ground of desertion in H.M.O.P.No.457 of 2015 before the Family Court, Coimbatore and the divorce was also granted. Against which the respondent had filed C.M.A.No.4534 of 2019, which is pending before this Court. He further submitted that the respondent had filed I.A.No.92 of 2016 in H.M.O.P.No.457 of 2015, seeking maintenance. The Court below directed the respondent to pay a sum of Rs.6,500/- towards maintenance to the respondent. Thereafter, the award amount was enhanced to Rs.15,000/- in the year 2019. The said Karthikeyan filed Crl.R.C.No.1230 of 2019 before this Court. This Court while admitting the Revision Petition granted stay on a condition that the said Karthikeyan to pay 50% of Rs.15,000/- i.e Rs.7,500/- per month to the respondent. At that time of admission, there was an arrear of Rs.1,00,000/- which was paid by Karthikeyan and he was regularly paying monthly maintenance amount till December 2019. From January 2020 onwards monthly maintenance amount of Rs.7,500/- is not be paid by said Karthikeyan. The arrear amount for 9 months stands out around Rs.67,500/-. The respondent is unemployed and she is suffering with her son, who is studying III standard. The respondent residing with her parents and now her brother objects for the respondent stay with their parents and she may be forced to leave her parents house and suffer without any support. The respondent's estranged husband Karthikeyan is a Software Engineer, earning a good salary and settled in Bangalore. Further, he failed to comply with the order of this Court in the Revision Petition blatantly despite sufficient means and income. After the lifting of lockdown and normal functioning of Court, yesterday i.e on 28.09.2020, the respondent filed petition against her estranged husband Karthikeyan for non-payment of maintenance, seeking warrant.

3. At this stage the learned counsel for the petitioner submits that the said Karthikeyan has not filed this quash petition. The petitioners herein are the in-laws of the respondent and it is for the Karthikeyan to comply with the order of this Court. The learned counsel further submitted that he would advice Krathikeyan to make the arrear payment of Rs.67,500/- through Demand Draft and also continue to pay the monthly maintenance as per order of this Court in 1230 of 2019. This payment would not prejudice the rights of the said Karthikeyan. To inform the petitioners and said Karthikeyan to produce the affidavit to the above effect, seeks small accommodation.

3. In continuation of the same, the respondent's estranged husband Karthikeyan had filed an affidavit along with a copy of the Demand Draft No.279892 dated 29.09.2020 drawn on the Karuru Vysya Bank Limited for a sum of Rs.60,000/-.

4. The learned counsel for the petitioners submitted that the said Karthikeyan has paid maintenance upto January 2020, the amount is due and payable only for 8 months from February 2020 to September 2020, for which he has given Demand Draft and he also undertook to pay the maintenance amount each and every month regularly as directed by this Court in Crl.R.C.No.1230 of 2019. For better appreciation the relevant portion from the affidavit filed by Karthikeyan is extracted her under:

" 2. As directed by this Court, I have taken DD No.279892 dated 29.09.2020 drawn on Karur Vysya Bank, Kovaipudur, Coimbatore for Rs.60,000/- (Rupees Sixty Thousand Only) and sent the same to the respondent through post. Since I have paid maintenance upto January 2020, the amount is due and payable only for 8 months from February 2020 to September 2020. Herewith I have enclosed the xerox copy of the DD for kind perusal of this court.

3. I humbly submit that further I under take I will pay the maintenance amount each and every month regularly. Hence this under taking affidavit is being filed as directed by this Court."

5. The learned counsel for the petitioners on instruction submitted that the said Karthikeyan who is an estranged husband of the respondent will participate in the domestic violence proceedings before the Lower Court and he will not be

a reason for any delay in the proceedings.

6. The learned counsel for the respondent submitted that the respondent had received the Demand Draft and she has no objection to quash the proceedings in domestic violence cases against the petitioners herein alone.

7. Considering the facts that the relief sought by the respondent is against the estranged husband Karthikeyan, admittedly, the petitioners are in-laws of the respondent. Petitioners 1 and 2/parents of the Karthikeyan who are aged persons and petitioners 3 and 4/sister and brother of the Karthikeyan, who are married and settled with their respective families and the respondent has got no objections to quash the proceedings against the petitioners herein, the proceedings against the petitioners herein in D.V.A.No.2 of 2015, on the file learned Judicial Magistrate, Avinashi is alone quashed.

8. Considering the domestic violence case is pending from the year 2015, the Trial Court is directed to complete the proceedings in D.V.C.No.2 of 2015, within a period of four months from the date of receipt of a copy of this order.

9. This Criminal Original Petition is allowed accordingly. Consequently, connected miscellaneous petitioners are allowed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1.The learned Judicial Magistrate,
Avinashi.

2.The Public Prosecutor,
Madras High Court.

+1cc to Mr.V.V.Sairam, Advocate SR.32979

Cr1.O.P.No.22571 of 2015
and M.P.Nos.1 & 2 of 2015

RSV(CO)
CB(05/11/2020)