

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.24301 of 2016

and

CrI.M.P.Nos.11584 & 4054 of 2016

1.Konjiadaikkan

2.Palaniammal

...Petitioners

Vs.

K.Chitra

...Respondent

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to C.C.No.55 of 2016 on the file of the learned District Munsif cum Judicial Magistrate, Sriperumputhur filed by the respondents herein and to quash the same.

For Petitioners : Mr.N.R.Rajagopalan

For Respondent : Mr.M.Balaji

ORDER

This Criminal Original Petition has been filed to call for the records pertaining to C.C.No.55 of 2016 on the file of the learned District Munsif cum Judicial Magistrate, Sriperumputhur filed by the respondents herein and to quash the same.

2 The first petitioner is the husband of the respondent and they are having three children out of their wedlock. It is submitted that the first petitioner married one Palaniammal and the marriage was solemnized on 19.06.2015. Under this circumstance, the respondent herein has filed a suit in O.S.No.102 of 2015, before the learned District Munsif cum Judicial Magistrate, Thirumayam against the petitioners and three others for declaration that the marriage between the petitioners is not valid in law. Thereafter, the respondent claiming to be the legally wedded wife of the first petitioner, has filed a case in M.C.No.4 of 2016 under Section 12 of the

Protection of Women from Domestic Violence Act 2005, before the learned District Munsif cum Judicial Magistrate at Sriperumputhur in the month of January, 2016 against the first petitioner and his younger brother Subbiah. Thereafter, she had filed a case in C.C.No.55 of 2016 before the District Munsif cum Judicial Magistrate at Sriperumputhur in the month of February, 2016 against the petitioners seeking cognizance for the offences under Section 494 and 496 of IPC, which has been pending before the Trial Court.

3 Heard Mr.N.R.Rajagopalan, learned counsel for the petitioners and Mr.K.Balaji, learned counsel appearing for the respondent and perused the materials placed on records.

4 It is seen that the relief sought for by the respondent in the domestic violence case with regard to residential rights, compensation, etc., can be made and claimed as against her husband, who is already a party in that case. As such, the protection order sought for by the respondent herein in the domestic violence case against the second petitioner, based on the allegations, cannot be maintained, in view of the fact that the allegations of harassment meted out by the second petitioner against the respondent itself seems to be false. While that being so, there cannot be any act of any domestic violence as defined under Domestic Violence Act against the second petitioner. In the absence of the same, the proceedings as against the second petitioner cannot be maintained and consequently, the second petitioner need not undergo the ordeal of facing a criminal trial.

5 In view of the above, this Court is inclined to quash the proceedings in C.C.No.55 of 2016 on the file of the learned District Munsif cum Judicial Magistrate, Sriperumputhur, insofar as the second petitioner is concerned, on condition that, the first petitioner shall deposit a sum of Rs.5,000/- (Rupees Five Thousand only) before 5<sup>th</sup> of every English Calendar month to the credit of C.C.No.55 of 2016, on the file of the learned District Munsif cum Judicial Magistrate, Sriperumputhur, as ad-interim maintenance, without prejudice to both the parties, failing which this order shall stand automatically cancelled. On such deposit being made, the respondent is entitled to withdraw the same.

6 Insofar as husband of the respondent is concerned, since the impugned proceedings in C.C.No.55 of 2016 is pending from the year 2016 onwards, it would be appropriate to direct the Trial Court to complete the trial within a period of six months from the date of receipt of copy of this order. The husband of the respondent is directed to appear before the trial Court on the next hearing date, failing which, the respondent is

at liberty to approach this Court.

7 In the result, this Criminal Original Petition stands allowed in respect of the second petitioner alone. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dua

To

District Munsif cum Judicial Magistrate,  
Sriperumputhur.

+1cc to Mr.K.Balaji, Advocate, S.R.No.18448/20

CRL.O.P.No.24301 of 2016  
and  
Crl.M.P.Nos.11584 & 4054 of 2016

NR (CO)  
RN (08/06/2020)

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