

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.8567 OF 2015 AND
CRL.M.P.NO.1 OF 2015

1.L.K.Selvakumar
2.Sellakuamarasamy
3.Ranjanidevi
4.Chandrabanu

... Petitioners

Vs.

Shanthi

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to C.M.P.No.166 of 2015 on the file of the Chief Judicial Magistrate of Erode and quash the same.

For Petitioners : Mr.V.S.Kesavan

For Respondent : Mr.S.Kaithamalai Kumaran

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.M.P.No.166 of 2015, pending on the file of the Chief Judicial Magistrate Court, Erode.

2.Relief sought for before the Court below by the respondent under Sections 12, 17(1), 18, 19(8), 20 of Protection of Women from Domestic Violence Act and Section 498(A) IPC. The respondent seeks residential right in the shared household at No.140, Muthur Main Road, Puthuvalasu, Lakkapuram, Erode District for her and her children; the petitioners not to disturb them in any manner; the 1st petitioner to return back the jewels of 90 sovereigns and the 1st petitioner to pay monthly maintenance of Rs.30,000/- to the respondent and her children.

3.The 1st petitioner is the estranged husband, the 2nd petitioner is the father-in-law and the 3rd & 4th petitioners are the sister-in-laws of the respondent.

4.The case of the respondent is that the marriage between the 1st petitioner and the respondent was held on 10.09.1989 at Kamadhenu Marriage Hall, Erode as per the Hindu Rites and

Customs. During the marriage, the parents of the respondent gave 177 sovereigns of jewels and Rs.1,00,000/- as 'Sridhana'. After the marriage, the 1st petitioner and the respondent were living at No.140, Muthur Main Road, Puthuvalasu, Lakkapuram, Erode District as joint family. Out of their wedlock, they have one female child Geethanjali born on 23.05.1990 and male child Yogesh Kumar born on 09.01.1994.

5.The 1st petitioner was running M/s.Mahadevi Paper Mart and also running real estate business and having agricultural lands. During the year 2010, the 1st petitioner along with one Sumathi, wife of Thirugnanasambandam from Poonthurai, Erode District, started Auto Loom business, for which, the respondent was forced to bring a crore of rupees from her parents, but she refused. Annoyed over the same, the 1st petitioner tortured her and took away 90 sovereigns of jewels for the purpose of starting Auto Loom business. The 1st petitioner developed close relationship with the said Sumathi and started avoiding the respondent and her children. Due to which, there was matrimonial discord between the 1st petitioner and the respondent, the respondent was forced to live separately with the children in the first floor, the petitioners were living in the ground floor separately. Thereafter, the respondent was forced out from the matrimonial house on 15.11.2013 and forced to reside in rental house with her children. On 25.11.2013, the marriage of the respondent's daughter Geethanjali was held at Thiruchengode, the marriage expenses was met by the respondent and her parents. None of the family members of the 1st petitioner participated in the marriage and contributed for the same. Thereafter, the daughter of the respondent Geethanjali given birth to a child on 09.08.2014, there was no participation and contribution by the 1st petitioner and his family members. The son of the respondent Yogesh Kumar is studying in Velalar Engineering College, Erode and his college expenses are paid by the respondent. Hence, she sought the relief as stated above.

6.The learned counsel for the petitioners submitted that the marriage between the 1st petitioner and the respondent was held on 10.07.1989. It was an arranged marriage. During the marriage, 'Sridhana' on the side of the respondent was given. He further submitted that the respondent was brought up by her maternal grand father at Anthiyur and she was very adamant in nature and she did not acknowledge of the parents of the 1st petitioner during her matrimonial life and she never discharged her duties as a dutiful wife and daughter-in-law. The attitude of the respondent was hostile and she voluntarily deserted the matrimonial life, on 05.11.2013, the respondent conducted marriage of her daughter Geethanjali without the knowledge of her petitioners and she is independently in all manner, which is her own making and the petitioners are not the cause or reason for

the same.

7.It is further submitted by the learned counsel for the petitioners that the 1st petitioner was paying rent for the house, where the respondent is staying and also taking care of his children. In support of it, the bank statement of account has been produced. Further, the 1st petitioner presented a motor bike for his son Yogesh Kumar and he has been regularly paying college fees and other fees. In support of the contention, the said Yogesh Kumar filed an affidavit, the 1st petitioner is alone is paying the college fee and other fees. The learned counsel further submitted that the 2nd petitioner, who is the father-in-law of the respondent, is now aged about 80 years and he is having age related ailments, the 3rd and 4th petitioners, who are the sister-in-laws of the respondent, were married and living separately, which is admitted by the respondent. Further, a divorce petition is filed in H.M.O.P.No.257 of 2013 before the learned Subordinate Judge, Erode, in which, the respondent has filed a counter, wherein no such allegation was made against the petitioners.

8.Thus, the allegations made in complaint does not constitute prima facie case against the petitioners. Moreover, the complaint had been instituted with mala fide intention and with ulterior motive for wreaking vengeance, due to personal grudge. Hence, the continuation of the criminal proceeding shall only amount to unnecessary harassment to the petitioners.

9.Resisting the aforesaid submissions, the learned counsel for the respondent submitted that the petitioners right from the marriage, subjected the respondent to cruelty and harassment. He further submitted that the 1st petitioner after starting partnership business with the said Sumathi, developed illegal relationship with her and started avoiding the respondent and her children. The respondent with great difficulty and with aid of her parents, brought her children. For the marriage of the daughter of the respondent Geetanjali, the petitioners neither supported nor participated in the marriage.

10.The learned counsel for the respondent further submitted that the expenses for her son, who is studying in Velalar College of Engineering, Erode, is paid by the respondent. The gold jewels of 90 sovereigns of the respondent were taken away by the 1st petitioner for the purpose of starting a business with the said Sumathi and forced the respondent to leave the matrimonial home. When the respondent complained the 1st petitioner's illicit relationship with the said Sumathi, the petitioners 2 to 4 failed to restrain the 1st petitioner, on the other hand they abetted the act of the 1st petitioner.

11.Despite the 1st petitioner having huge wealth and resources and also having shopping complex and earning more than one lakhs per month, is neglecting the respondent and her children. Hence, he prayed for dismissal of the quash petition.

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

13.It is seen that the relief sought by the respondent is only against the 1st petitioner, who is her estranged husband. It is admitted that due to the matrimonial dispute, a divorce petition is pending before the learned Subordinate Judge, Erode in H.M.O.P.No.273 of 2014. From the complaint of the respondent, it is seen that the marriage of the respondent's daughter took place on 25.11.2013 at Thiruchengode. The choice of bridegroom for their daughter was not acceptable to the 1st petitioner. Due to which, there was dispute between the 1st petitioner and the respondent and from the year 2013, the respondent is living separately with her children. The 1st petitioner is taking care of his son Yogesh Kumar. Further, for the matrimonial dispute the respondent earlier filed a Domestic Violence Case in D.V.C.No.5 of 2016, before the learned Judicial Chief Judicial Magistrate, Erode and later, it has been transferred to some other Court. What happened to this complaint is not known, this petition is directly filed before the Court and giving no occasion for the Protection Officer to verify the veracity of the complaint.

14.It is also not in dispute that the 2nd petitioner is aged about 80 years and the 3rd and 4th petitioners got married and living separately with their respective families. All the relief sought for in this case is against the 1st petitioner alone.

15.Under these circumstances, this Court is inclined to quash the proceedings as against the petitioners 2 to 4 alone. Accordingly, the proceedings in C.M.P.No.166 of 2015, pending on the file of the Chief Judicial Magistrate Court, Erode is, hereby, quashed as against the petitioners 2 to 4 alone. This Criminal Original Petition is, accordingly, partly-allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

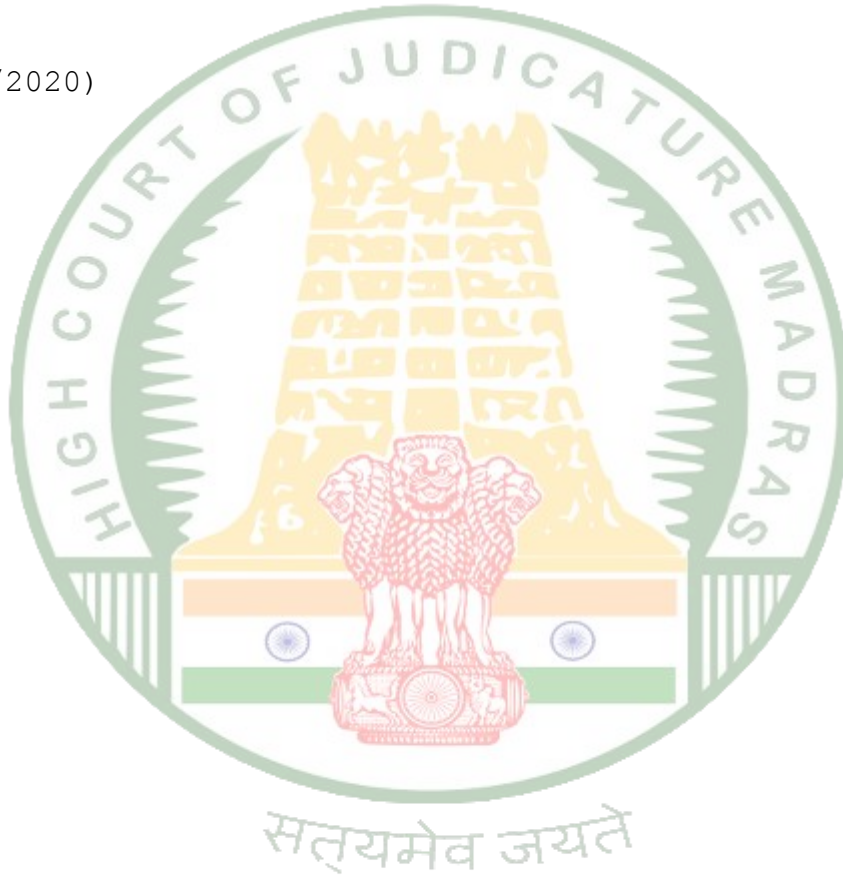
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To
The Chief Judicial Magistrate Court,
Erode.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.29877

Crl.O.P.No.8567 of 2015

PA (CO)
NRA(14/12/2020)



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