

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :06.08.2020

PRONOUNCED ON :14.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.9366 of 2015
M.P.No.1 of 2015

1.G.Krishnasamy
2.Kasthuri
3.Abarnapriya

... petitioners R2 to R4

Vs.

Subramanian Artheeswari ... Respondent/Defacto Complainant

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to M.C.No.1/2015 on the file of the learned Judicial Magistrate Additional Mahila Court, Cuddalore and quash the same.

For Petitioners : Mr.R.Kirubakaran

For Respondent : Mr.R.Nandha Kumar
Legal Aid Counsel

O R D E R

The petitioners, who are respondents 2 to 4 in M.C.No.1 of 2015, filed by the complainant/respondent herein which is pending before the Judicial Magistrate, Cuddalore, filed this quash petition.

2. The brief facts of the case is that the marriage between the respondent and the Krishnasamy Ramesh took place on 20.05.2005 at Villupuram, which was an arranged marriage. The petitioners 1 and 2 are the parents and the third petitioner is the sister of the said Krishnasamy Ramesh. At the time of marriage, the respondent had given lot of sridhanas as per the demand of the petitioners. Right from the marriage, the petitioners subjected the respondent to cruelty. The respondent is a Homeopathy Doctor and after the marriage, she left to United kingdom to join with her husband, who was working in United Kingdom, as Consultant in Information Technology, where the respondent was working hardly and out of her own income, she purchased a house in Chennai in her name and registered the same

on 01.09.2008. Her husband in UK continued his harassment and subjected her to cruelty. Meanwhile, the respondent conceived, delivered a boy baby on 29.07.2006. Even after the birth of the child, her husband did not change his act and continue cruelty against the respondent. While being so, her husband suddenly left the respondent in UK and came to India. The respondent was left with no other facilities and without any other way, she left UK and came back to India. She is residing with her parents at Panruti, Cuddalore Taluk. When the respondent questioned the illegal acts of her husband, to escape from his illegal acts, he filed a suit in O.S.No.68 of 2013 before the Family Court, Chennai, seeking declaration of the sale deed dated 01.09.2008 vide document No.3133 of 2008 as void. He had also filed H.M.O.P.No.97 of 2014 seeking divorce against the respondent before the Family Court, Villupuram and both the cases are pending for adjudication. The respondent is the absolute owner of the property situated at Chennai. In order to escape from the clutches of law, her husband filed the above suit as well as obtained interim orders and prevented the respondent from entering and enjoying the property. The property at Choolaimedu, Chennai, was purchased out of her income. Hence the respondent filed Domestic Violence case seeking protection from dispossessing the respondent and her child from the house situated at New No.3/7, Old No.55/7, 1st floor, Bajanai Koil Street, Choolaimedu, Chennai and not to commit any harm, injuries to her health and well being and further, restraining her husband from committing any domestic violence. Hence the complaint.

3. There was no representation on behalf of the respondent, despite the respondent being served with notice dated 17.04.2015, and this was received by the respondent on 22.04.2015. Affidavit of Service had been filed. Despite the name of the respondent printed in the cause list, there is no representation for the respondent. Since the petition is kept pending for the past four years without any progress, this Court appointed R.Nandha kumar as legal aid counsel by order dated 20.07.2020.

4. Heard the submissions of the learned counsel for the petitioner and the learned counsel for the respondents.

5. The learned counsel for the petitioner submitted that the marriage between the petitioners' son and the respondent took place on 20.05.2005 at Villupuram. During the marriage, the petitioners son was employed in Information Technology as Consultant at United Kingdom. The respondent was a Homeopathy Doctor. After the marriage, they left to UK and lived happily. Out of the wedlock, a male child was born on 29.07.2006. The petitioners' son was working hard and purchased properties in UK and in India. One of the property was purchased at Bajanai

Koil Street, Choolaimedu, Chennai. Since the petitioners' son could not travel at that time, he had given power of attorney to the respondent to complete the purchase of the property. The property was purchased by borrowing loan from HDFC Bank and loan was also repaid by the petitioners' son. It is seen that there was some matrimonial dispute between them. The petitioners' son had come to India and while getting back the property documents from the Bank, he was shocked to know that the property had been purchased in the name of respondent against the authority given by the petitioners son. In fact, the petitioners son had sent money and borrowed loan in his name from HDFC Bank and repaid the loan. The behaviour of the respondent is unacceptable. She insisted all the properties and wealth earned by the petitioners son to be settled in her favour. Otherwise, she would lodge a complaint for dowry demand, cruelty and harassment. The petitioners son lost the hope of the respondent coming to reunion, filed a suit in O.S.No.68 of 2013 before the Family Court, Chennai seeking to set aside the sale deed document No.3133 of 2008 which was registered by fraud. Further, he also filed interim applications restraining the respondent from creating any encumbrance or disturbance in peaceful possession of Choolaimedu Property situated at Chennai. The concerned Court restrained the respondent and gave protection to the petitioners son. The petitioners son filed a divorce petition initially before the Cuddalore Court and later, it was transferred to the First Additional Family Court, which is pending in O.S.No.4672 of 2017. The respondent is now in UK and she never appeared before the Family Court from the year 2016. The petitioners' son is appearing before the concerned Court and pursuing the cases. The respondent, after filing Domestic Violence complaint, had settled in UK with her child. Further, he submitted that looking at the complaint, it is apparent that the petitioners name had been inserted later and afterthought. The original complaint was proceeded against krishnasamy Ramesh alone and the complaint was typed by electronic typer and the petitioners name had been inserted later by manual typing. On the entire reading of the complaint, there is no mention about the petitioners and no relief had been sought against the petitioners. The Domestic Violence petition has been filed by the respondent only to harass the petitioners. The petitioners never shared common household. In fact, the third petitioner was married much earlier to the marriage of the respondent and she got an independent family. The Domestic Violence Petition is projected seeking relief from the petitioners not to take away Choolaimedu property from the respondent and the other reliefs are formal. Further, no relief is sought against the petitioners. By assailing these reasons, the petitioners prayed for quashing of the Domestic Violence Complaint against them.

6. The learned counsel for the respondent submitted that the respondent sought three reliefs namely restraining order of

dispossession of her, from Bajanaï Koil Street, Choolaimedu, Chennai and not to commit any harm or injuries under Section 3 (a) of D.V.Act, 2005 and to prevent the petitioners from committing domestic violence against her. The marriage between the respondent and the petitioners' son held in the year 2005 and after the marriage, she was taken to London, where she was working as Homeopathy Doctor. Apart from that, she was consulting the patients through telephone and she was earning regular income. Her husband was paranoid. He was having doubts on her in all aspects. On one occasion, he had deserted the respondent, came to India. Thereafter, with great difficulty, she survived with the help of her friends and later, reached India, questioned her husband about his acts. The respondent's estranged husband failed to show any remorse about his activities. On the other hand, he along with the petitioners harassed and caused cruelty to the respondent.

7. The learned counsel for the respondent further submitted that the property situated at Choolaimedu, Chennai was purchased by the respondent out of her earning and savings. Thereafter, her husband wanted the property to be settled in his name, which was not agreeable to the respondent. Hence, he filed a civil suit before the Family Court, in which, the respondent herein is a defendant and by making false allegations, the son of first and second petitioner managed to get interim orders against respondent. The respondent's husband is duty bound to maintain the respondent as well as his child. But so far he had not taken any steps to provide them with basic requirements. On the other hand, by making false allegations, he had obtained interim orders from the Family Court and thereby, denied the respondent from enjoying the property, which she had purchased out of her own money. The petitioners herein had joined in causing illtreatment and harassment to the respondent. Hence, the respondent had filed a complaint under Domestic Violence Act,. Therefore, he prayed for dismissal of this petition.

8. Considering the rival submissions and on perusal of the materials, it is seen that the marriage between the respondent and Krishnasamy Ramesh and the birth of the male child are not in dispute. Further, the said Krishnasamy Ramesh was employed as Consultant in United Kingdom and after the marriage, the respondent had joined him to UK. Her estranged husband purchased properties in UK and India. For purchasing of Bajanaï Koil property, he had executed power of attorney to the respondent. The document No.3133 of 2008 dated 01.09.2008 has been registered in the name of the respondent. The loan for purchase of the property was borrowed from HDFC Bank and the loan was repaid by Krishnasamy Ramesh. In O.S.No.68 of 2013 and I.A.No.1011 of 2013, the Competent Court, on considering the documents and submissions, found that the loan was obtained and the payment had been made by Krishnasamy Ramesh and restrained

the respondent from creating any encumbrance and ordered the respondent not to dispossess the petitioner from enjoyment of the property. The issues in the Domestic Violence already dealt by competent Court and the same has to be agitated before the concerned Court. The other reliefs are only consequential. From the reading of the complaint, it is seen that there is no averment and relief sought against the petitioners herein. Thus, this Court finds that the continuance of the proceedings against the petitioners would amount to abuse of process of law. In view of the same, M.C.No.1 of 2015 is hereby quashed as against the petitioners alone/R2 to R4.

9. With the above observations, the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is also closed.

10. This Court places its appreciation to Mr.R.Nandha Kumar, Legal Aid Counsel, for making strenuous effect in defending the case for the respondent.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssb

To

1.The Judicial Magistrate Additional Mahila Court,
Cuddalore.

2.The Secretary,
Legal Aid Service Authority,
High Court, Madras-104.

CRL.O.P.No.9366 of 2015

VG II(CO)
GN(28/10/2020)

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