

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2020

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.3772 of 2020

Mahendran
S/o.T.K.E.Sivaprakasam,
No.T.2, 3rd floor,
Asharashmi Apartment,
1076 F, T.V.S.Colony,
Anna nagar West Extension,
Chennai 600 101 Petitioner

Vs.

1.Anuradha F/A 38,
D/o.Paramasivam
3,I Avenue, Sundar Nagar,
Chennai-600 032

2.Sowbarnika F/A 13
Minor daughter of Mahendran
3, I Avenue, Sundar Nagar,
Chennai 600 032

3.Dikshitha F/A 9
Daughter of Mahendran
3, I Avenue, Sundar Nagar,
Chennai 600 032

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to the proceedings in D.V.C.No.23 of 2019 on the file of the Additional Mahila Court, Magisterial Level, at Alandur Kancheepuram district and to quash the same.

For Petitioner : No appearance

O R D E R

This petition has been filed to quash the proceedings in D.V.C.No.23 of 2019 on the file of the Additional Mahila Court, Magisterial Level, at Alandur Kancheepuram district thereby taken cognizance for the offences under Section 12 of the Protection of Women from Domestic Violence Act 2005 seeking remedies of protection orders under Section 18 of the Act and other remedies under Sections 19, 20 and 21 of the said Act.

2. The petitioner is the husband of the first respondent and the marriage between Mahendran and the first respondent Viz., Anuradha was solemnized on 31.05.2004. Thereafter, due to matrimonial disputes the first respondent and her husband were living separately. Under this circumstance, the first respondent herein filed a petition under Domestic Violence Act in D.V.C.No.23 of 2019 on the file of the Additional Mahila court (Magisterial level) at Alandur, Kancheepuram. The said D.V.A.No 23 of 2019 of 2017 is pending for trial.

3. It is seen that the relief sought for by the first 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 this petitioner, based on the allegations, cannot be maintained, in view of the fact that the allegations of harassment meted out by the petitioner against the first respondent itself seems to be false.

4. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in Crl.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

5. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in Crl.A.No.1572 of 2019 dated 17.10.2019 in the case of Central Bureau of Investigation Vs. Arvind Khanna, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

6. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in CrI.A.No.1817 of 2019 in the case of M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to

prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

7. Insofar as A1/husband of the first respondent is concerned, since the impugned proceedings in DVA.No.23 of 2019 is pending from the year 2019 onwards. In view of the above discussion, this Court is not inclined to quash the proceedings in D.V.C.No.23 of 2019 on the file of the Additional Mahila Court, Magisterial Level, at Alandur Kancheepuram district. The petitioner is at liberty to raise all the grounds before the trial Court.

8. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Additional Mahila Court, (Magisterial Level),
Alandur Kancheepuram district.

Ad(co)
krd 9/10

CRL.O.P.No.3772 of 2020
and
CrI.M.P.No.2181 of 2020

WEB COPY