

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 17.12.2019	Delivered on: 21.01.2020
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CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.23305 of 2019

and

Crl.M.P.Nos.12232 and 12233 of 2019

1.P.Selvakumar

2.S.Padmavathi @ Shanthi ...Petitioners/2nd and 3rd Respondents

Vs.

A.Shivaranjiani

...Respondent/Petitioner

PRAYER: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in D.V.A.No.19 of 2019, now pending on the file of the learned Judicial Magistrate No.IV, Tiruppur, and quash the same as illegal, incompetent, without jurisdiction by allowing the present Criminal Original Petition.

For Petitioners: Mr. P.SureshBabu

For Respondent : Mr. V.Vijayakumar

ORDER

This petition has been filed by the father-in-law and mother-in-law of the respondent to quash the proceedings against them in D.V.A.No.19 of 2019 on the file of the Judicial Magistrate No.IV, Tiruppur.

2. The respondent herein had filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005, (herein after referred as "the Act") against her husband S.Goutham and her father-in-law and mother-in-law (petitioners herein) seeking certain relief under "the Act". Based on the said application, the learned Judicial Magistrate No.IV, Tiruppur, has taken the case on file in D.V.A.No.19 of 2019 and issued notice to the respondents therein. After receipt of the notice, the petitioners herein have filed the

present petition under Section 482 of Criminal Procedure Code to quash the proceedings against them in D.V.A.No.19 of 2019 on the file of the Judicial Magistrate No.IV, Tiruppur.

3. Heard Mr.P.SureshBabu, learned counsel for the petitioners and Mr.V.Vijayakumar, learned counsel for the respondent.

4. The learned counsel for the petitioners has submitted that the marriage between the son of the petitioners namely, S.Goutham and the respondent herein was solemnized on 14.02.2018 at Sivanmalai Arulmigu Subramania Swamy Thirukoil and thereafter, they have resided in India for 20 days only. He further submitted that on 04.03.2018, the respondent and the petitioners' son left India and went to U.S.A. where the petitioners' son is working. Due to the respondent's adamant and different behaviour, the marriage has not been consummated.

5. He further submitted that on 09.05.2018, the respondent fell down due to her medical problem, immediately she was taken to hospital and was given full treatment. The respondent always indulged in quarrelling with her husband each and every day. Some times the respondent without informing her husband, would go outside and return back only in the late night in a drunken condition. One day there was a big fight between the respondent and her husband and she assaulted her husband. Hence, the petitioners' son has filed the HMOP.No.74 of 2019 on the file of the Sub-Court, Tiruppur, seeking divorce and the same is pending.

6. He further submitted that the respondent has resided with the petitioners only for 15 days and during the said period, there is no possibility of any domestic violence by the petitioners against the respondent. He further submitted that the first petitioner is suffering from "FOLLICULAR LYMPHOMA GRADE III STAGE IV, ADMITTED RCHOP" from the year 2014 and the second petitioner is suffering from DIABETIC, THYROID and LOW BONE MASS and for taking treatment they went to U.S.A. and they stayed there for a short period and only with a view to harass the petitioners, the respondent has filed a petition under Section 12 of the Act with bald allegations and therefore, he prayed to quash the proceedings against the petitioner in D.V.A.No.19 of 2019 on the file of Judicial Magistrate No.IV, Tiruppur.

7. Per contra, the learned counsel for the respondent has submitted that the entire marriage expenses around Rs.30,00,000/- was borne by the respondent's parents. He further submitted that eventhough the respondent's parents are poor and they were not able to meet out the huge marriage expenses, at the time of marriage, the first petitioner herein had arranged finance and obtained a sum of Rs.5,00,000/- from his relative and insisted to pay interest for the said amount. With great difficulty, the said amount was settled on 20.11.2018 only after demise of respondent's father. He further submitted that the entire marital life continued only for a period of 4 months, but during the said period, the petitioners and also their son gave torture to the respondent. Even during the period of stay at U.S.A., the petitioners and their son tortured the respondent.

8. He further submitted that the petitioners' son is working in U.S.A. as Senior Software Engineer in a private company called as DELL drawing salary of more than Rs.5,00,000/- per month. He further submitted that since the petitioners and their son demanded dowry, the respondent's parents gave 35 sovereign of gold jewels and household utensils worth Rs.1,50,000/- as dowry and not satisfied with the same, they demanded more dowry. He further submitted that the allegations that the respondent frequently indulged in quarrel with the petitioners' son and assaulted him are all false.

9. He further submitted that the petitioners' son has filed divorce petition with false allegations only at the instigation of the petitioners. He further submitted that the petitioners and their son have committed domestic violence by giving torture and also by retaining the respondent's jewels and articles and hence, the respondent has filed an application under Section 12 of the Act seeking monetary relief, compensation, to prevent them from selling or destroying the dowry properties and to return the said properties. He further submitted that there are sufficient materials to proceed against the petitioners under the Domestic Violence Act and therefore, he prayed to dismiss the petition.

10. In the application filed by the respondent under Section 12 of the Act, the following reliefs have been asked:-

" (a) Grant the protection order against the respondent persons to prevent them from committing

any domestic violence against the petitioner under Section 18(a) of this act.

(b) Directing the first respondent to pay Rs.20,00,000/- as a monetary relief to the petitioner for the day to day expenses and for the maintenance of the petitioner under Section 20(1) (d), 20(2), 20(3) of this act.

(c) Directing the first respondent to pay Rs.10,00,000/- as a compensation for the difficulties, mental tortures sustained by the petitioner as domestic violence under Section 22 of this act.,

(e) Grant the protection order against the respondent persons to prevent them from selling or destroying the dowry properties mentioned above under Section 18 (e) and 10(d) of this act.,

(f) Directing the first respondent to given the 57 sovereign of gold ornaments and other things which are all gifted at marriage function to the petitioner by her parents.

(g) Directing to pay cost of this petition.

(h) Awarding for such other order and further as may be deemed to just and necessary in the circumstances of this case."

11. A perusal of the aforesaid prayer made by the respondent in her application shows that she seeks reliefs mainly against her husband. Only two reliefs i.e., to grant protection in order to prevent the petitioners herein and their son from committing any domestic violence and to grant protection in order to prevent them from selling or destroying the dowry properties are asked against the petitioners. Except the aforesaid reliefs all other reliefs have been asked against her husband only.

12. In relief (f), the respondent has asked to direct her husband to give 57 sovereigns of gold ornaments and other things which were gifted at the time of marriage function to her. The aforesaid prayer shows that the respondent herself has admitted that all the jewels and other articles are in the custody of her

husband only and that being so, no relief need be granted restraining the petitioners herein from selling or destroying the dowry properties. Insofar as seeking protection order to prevent the petitioners from committing domestic violence is concerned, admittedly now the respondent is not residing with the petitioners in a shared house hold. As per the address given in the application filed by the respondent in D.V.A.No.19 of 2019, now she is residing at Door No.40, Ohm Nivas, K.G.Lotus Park, Kangeyam Road, Tirupur 641 606, whereas the petitioners herein are residing at Door No.2/936-B, Nethaji 2nd street, S.R.Nagar, Mangalam Road, Tiruppur 641 687. So, it is clear that now the respondent is not residing with the petitioners herein in a shared household and as such, they cannot commit any domestic violence against the respondent. So, the said relief also can not be asked against the petitioners herein.

13. For the aforesaid reasons, this Court is of the view that the respondent has not made out a prima facie case to proceed against the petitioners herein under the Domestic Violence Act. Hence, the proceedings initiated by the respondent against the petitioners herein in D.V.A.No.19 of 2019 on the file of the Judicial Magistrate No.IV, Tiruppur, are quashed. The learned Judicial Magistrate No.IV, Tiruppur, is directed to proceed against the petitioners' son namely, S.Goutham and dispose of the case in D.V.A.No.19 of 2019 in accordance with law. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Judicial Magistrate No.IV, Tiruppur.

+lcc to Mr.P.SureshBabu, Advocate Sr.3738
+lcc to Mr.V.Vijayakumar, Advocate Sr.4005

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and
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