

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.01.2020

Pronounced on : 13.05.2020

Coram:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.23851 of 2019

and

CRL.MP.No.12587 of 2019

Komethagavel @ Immanuel ...Petitioner/1st respondent

Vs.

Shoba ...Respondent/petitioner

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for the entire proceedings pending on the file of the Special Court to try cases filed under Protection of Women from Domestic Violence Act, 2005 at Coimbatore in DVC.No.377 of 2019 (Amended as per order in Crl.MP.No.1061 of 2019 dated 28.01.2020) against the petitioner and quash the same.

For Petitioner : M/s.Radhika Boopathi

For Respondent : Mr.P.Ayyasamy

ORDER

This Criminal Original Petition has been filed by the first respondent in DVC.No.377 of 2019 to quash the proceedings against him in DVC No.377 of 2019 on the file of the Special Court to try cases filed under protection of Women from Domestic Violence Act, 2005 at Coimbatore (DVC No.37 of 2014 on the file of the Judicial Magistrate No.I, Coimbatore).

2. The respondent herein has filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (herein after referred to as the 'DV Act' seeking certain reliefs under the 'DV Act' against the petitioner

herein (husband) and 11 others. Based on the said application, the learned Judicial Magistrate No.I, Coimbatore has taken the case on file as DVC No.37 of 2014 and issued notice to the respondents therein. After receipt of the notice, the first respondent therein (husband) has filed the present petition under Section 482 of Cr.P.C., to quash the proceedings against him. During pendency of this petition, the above DVC was transferred to the file of the Special Court to try cases filed under the DV Act and re-numbered as DVC.No.377 of 2019. Accordingly, this petition has been amended.

3. Heard Ms.Radhika Boopathi, the learned counsel for the petitioner and Mr.P.Ayyasamy, the learned counsel for the respondent.

4. The learned counsel for the petitioner has submitted that the marriage between the petitioner and the respondent was solemnized on 20.02.2012. She further submitted that the petitioner is working at USA and the respondent is working as Nursing Captain in Indian Army. She further submitted that after marriage, the petitioner and the respondent hardly lived together only for 20 days. The conjugal life of the petitioner was not satisfactory with the respondent due to her behaviour. Though the petitioner tried to work out the possible ways to patch up differences in the conjugal life, the respondent never cooperated for the same and hence the petitioner had left for USA on 11.03.2012. Even thereafter, the respondent did not change her attitudes and insulted the family members of the petitioner and also threatened that since she is working in Indian Army, she can influence the police and foist a false case.

5. She further submitted that since the respondent was not willing to change her attitudes, the petitioner through his father, has filed IDOP.No.235 of 2013 on the file of the Family Court, Salem for divorce and thereafter the respondent has lodged a false complaint before the police and based on the same, FIR has been registered under Section 498-A IPC and thereafter, a chargesheet also has been filed and a case has been taken on file in CC.No.27 of 2014 on the file of the Additional Mahila Court, Coimbatore. She further submitted that not satisfied with the filing of criminal case, the respondent has filed an application under the DV Act with false allegations.

6.The learned counsel for the petitioner has further submitted that in the said application, the respondent has stated that on the very next day of the marriage i.e., on 21.02.2012 itself the petitioner has demanded dowry, but after two years only she filed a false complaint . She further

submitted that the allegation that a house at Coimbatore was purchased from and out of the funds given by the respondent's parents is false. The said house was purchased in the name of the petitioner out of the retirement benefits of the petitioner's father. She further submitted that at no point of time, the petitioner and the respondent lived in the said house. She further submitted that the report submitted by the protection Officer would clearly show that only after getting exparte adinterim order from the court, the respondent has taken possession of the said house and further after taking possession, she inducted her parents into the said house and she left the said house and went to her working place at Ahamadabad and only there she is residing. She further submitted that the DVC has been filed only to harass the petitioner and his family members and therefore she prayed to quash the proceedings against the petitioner.

7. Per contra, the learned counsel for the respondent has submitted that the protection Officer has not submitted the report in the prescribed Format. He further submitted that the Protection Officer has filed a report one sidedly without examining the respondent or the neighbours and hence no reliance can be placed upon the said report. He further submitted that the said house was purchased from the funds provided by the respondent's parents and that disputed facts cannot be decided by this court. He further submitted that since a prima facie case has been made out with regard to the cruelty caused by demanding dowry, the police has filed charge sheet and the learned Judicial Magistrate also has taken cognizance of the offence under Section 498-A IPC. He further submitted that already, the parents of the petitioner have filed CrI.OP.No.11268 of 2017 to quash the proceedings against them in the DVC case in which, this court by the order dated 22.03.2019 has allowed the said petition on condition that the petitioner herein has to pay a sum of Rs.5000/- per month towards interim maintenance, but without complying with the said directions, the petitioner has filed the present petition. He further submitted that the dowry articles are only with the petitioner and that they have not been returned to the respondent and therefore he prayed to dismiss this petition.

8. It is seen from the typed set of papers filed by both the parties, based on the complaint lodged by the respondent herein an FIR was registered against the petitioner herein and his family members on 31.12.2013 in Cr.No.70 of 2013 under Section 498-A and 506(ii) IPC and subsequently after investigation a charge sheet also has been filed and based on the same, the Additional Mahila Court, Coimbatore has taken cognizance in CC.No.27 of 2014 and the same is still pending.

So, it appears that a prima facie case has been made out against the petitioner with regard to the commission of domestic violence.

9. Further, the petitioner claims that the house at Coimbatore has been purchased in his name by his father, whereas the respondent claims that the said house has been purchased by her parents. The said disputed facts cannot be decided in this petition.

10. Further, the respondent has stated in her DVC that her dowry articles are only with the petitioner and they have not been returned. The said question cannot be decided by this court.

11. It is also to be pointed out that the parents of the petitioner have filed Crl.OP.No.11268 of 2017 to quash the proceedings against them in the above DVC, wherein this court, by the order dated 22.03.2019 has allowed the said petition on a condition that the petitioner herein has to pay a sum of Rs.5000/- towards interim maintenance and also directed the trial court to dispose of the DVC within three months from the date of receipt of copy of the said order. As against the said order, the petitioner's parents have filed SLP.No.6828 of 2019 before the Hon'ble Supreme Court and the same is still pending. Under the said circumstances, this court is of the view that the petitioner has not made out a case to quash the proceedings against him.

12. In the result, this criminal original petition is dismissed. It is open to the petitioner to take all the defences, which are available under the law, before the trial court. Consequently, the connected criminal miscellaneous petition is closed. The trial court is directed to dispose of the case in DVC.No.377 of 2019 within three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gv

To

1.The Judicial Magistrate No I
Coimbatore

2.The Chief Judicial Magistrate
Coimbatore

Pre-delivery Order made in
CRL.O.P.No.23851 of 2019
and
CrI.MP.No.12587 of 2019

BR (CO)
RN (27/05/2020)



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