

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.28034 of 2019
and Crl.MP.No.14962 of 2019

1. V.Rajesh

2. S.Veerabadran

3. V.Latha

All are residing at
VSR Mahal Compound,
Guduvancherry,
Madambakkam,
Chennai - 6303 202.

.... Petitioners

Vs.

S.Anu Priya

W/o.V.Rajesh,

6/12, III Street, Thiruvallur Nagar,
Kottur, Chennai - 600 085

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records and quash the proceedings in D.V.C.No.47 of 2019 under the Protection of Women from Domestic Violence Act, 2005, on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai, as against the petitioners.

For Petitioners:Mr.A.Ramesh, Senior Counsel for Mr.G.R.Hari
For Respondent :Mr.M.Baskar.

सत्यमेव जयते
O R D E R

This petition has been filed to quash the proceedings initiated under the Domestic Violence Act in D.V.C.No.47 of 2019 on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai.

2. The respondent lodged complaint under the Domestic Violence Act alleging that on 16.09.2015, she got married with the first petitioner herein. Due to wed lock, a male child was born and thereafter there was a strange relationship between them. Thereafter, the respondent was driven out from the matrimonial home. Further alleged that on 30.08.2017, when the

first petitioner had gone to his office, the second petitioner viz., the father-in-law of the respondent herein entered into her room and had given sexual torture. When it was informed to the first petitioner, she was beaten up by him and she was sent to her parents home. Thereafter, the first petitioner filed divorce petition in F.C.O.P.No.155 of 2017 before the Family Court, Chengalpattu and the same is pending. On 27.05.2019, the respondent filed complaint before the Protection Officer and on receipt of the same the Protection Officer conducted enquiry and placed the matter before the learned XXIII Metropolitan Magistrate, Saidapet. Hence the proceedings.

3. The learned Senior Counsel appearing for the petitioners submitted that there are totally three accused in the domestic violence complaint in which the petitioners are arrayed as respondents 1 to 3. The first petitioner is the husband of the respondent and second and third petitioners are in-laws of the respondent herein. The entire allegations alleged in the complaint did not attack the provisions of Protection of Women from Domestic Violence Act, since all the allegations are bald, vague, absurd and inherently improbable. The first petitioner filed divorce petition and on receipt of the summons from the concerned Court, the second respondent waited for two years and thereafter lodged complaint under the Domestic Violence Act. He further submitted that Form II of the Act has to be filled up with date, time, place of violence and person who caused domestic violence. The purpose is that all the allegations made in the complaint must be verified by the Protection Officer. The learned Senior Counsel pointed out that the form has not been filled up with all particulars as such, the trial Court should not have taken cognizance on the complaint lodged by the respondent herein.

3.1. He also submitted that the domestic violence complaint filed before the Protection Officer on 12.07.2019, whereas the allegations made in the complaint are that on 30.08.2017 the petitioners caused domestic violence against the respondent herein. Therefore, the domestic violence complaint has been filed after the lapse of one year 10 months. Therefore it is barred by limitation and the learned Magistrate ought not to have been taken cognizance under the Domestic Violence Act. In this regard, he relied upon the judgment reported in (2011) 12 SCC 588 in the case of Inderjit Singh Grewal Vs. State of Punjab & Anr, which was followed by this Court in the order dated 04.04.2019 passed in CrI.O.P.No.11087 of 2017, wherein the Hon'ble Supreme Court of India held that the domestic violence cases cannot be filed belatedly and under Section 468 of Cr.P.C., the period of limitation is one year.

4. Per contra, the learned counsel appearing for the

respondent submitted that there are specific allegations as against all the petitioners herein and points raised by the petitioners have to be gone into only before the trial Court during trial. It cannot be quashed under Section 482 of Cr.P.C., since it is mixed questions of fact. Therefore, he prayed for dismissal of this petition.

5. Heard Mr.A.Ramesh, learned Senior Counsel appearing for the petitioners and Mr.M.Baskar, learned counsel appearing for the respondent.

6. The respondent is the wife of the first petitioner herein. They got married on 16.09.2015 and gave birth to a boy child. Due to strange relationship between the first petitioner and the respondent, the respondent was driven out from the matrimonial home on 30.08.2017. Thereafter, the first petitioner filed divorce petition in F.C.O.P.No.155 of 2017 on 03.10.2017 on the file of the Family Court, Chengalpattu, for divorce on the ground of cruelty and ill-treatment. Thereafter there are so many complaints filed by the petitioners as well as the respondent herein before the All Women Police Station. In fact, there was a settlement between the first petitioner and the respondent and thereafter there was no successful re-union between them.

7. While pending the divorce petition, the respondent lodged a complaint before the Protection Officer on 27.05.2019 under the Domestic Violence Act. After enquiry, the complain has been taken cognizance by the trial Court in D.V.C.No.47 of 2019 under the Domestic Violence Act against the petitioners. Though several grounds raised by the petitioners, on the ground of limitation, the learned Senior Counsel appearing for the petitioners cited the order dated 04.04.2019 passed by this Court in CrI.O.P.No.11087 of 2017, in the case of V.Nagarajan and ors Vs. B.P.Thangaveni, which reads as follows :-

"6. In this regard the learned counsel appearing for the petitioners relied upon the judgment reported in 2012 CrI.L.J.309 in the case of Inderjit Singh Grewal Vs. State of Punjab & Anr., which reads as follows:-

"24. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 Code of Criminal Procedure, that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Sections 28 and 32 of the Act 2005 read with Rule 15(6) of The Protection of Women

from Domestic Violence Rules, 2006 which make the provisions of Code of Criminal Procedure applicable and stand fortified by the judgments of this Court in *Japani Sahoo v. Chandra Sekhar Mohanty* AIR 2007 SC 2762; and *Noida Entrepreneurs Association v. Noida and Ors.* (2011) 6 SCC 508.

25. In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions of the Act 2005 is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the court. Undoubtedly, for quashing a complaint, the court has to take its contents on its face value and in case the same discloses an offence, the court generally does not interfere with the same. However, in the backdrop of the factual matrix of this case, permitting the court to proceed with the complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same."

The Hon'ble Supreme Court of India held that under Sections 28 and 32 of the Act 2005 r/w Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006 which make the provisions of the Code of Criminal Procedure applicable. Accordingly, the respondent ought to have been lodged complaint within a period of one year from the date of incident.

8. In the case on hand, admittedly the respondent was driven out from the matrimonial home on 30.08.2017. Immediately, the first petitioner filed divorce petition on the ground of cruelty and ill-treatment in F.C.O.P.No.155 of 2017 and the same is pending on the file of the Family Court, Chengalpattu for trial. On receipt of the summon from the Family Court and after having been waited for two years, on 27.05.2019, the respondent lodged the present complaint before the Protection Officer under the Domestic Violence Act. Therefore, the complaint has been lodged after the period of nearly two years. Further the second and third petitioners are the father-in-law and mother-in-law of the respondent herein. Unless and until any orders are sought for by the aggrieved person against the petitioners 2 to 3 herein, any amount of allegations made in the complaint may not be relevant, as the same did not correlate the relief sought for by the respondent in the domestic violence complaint. Therefore, the petitioners 2 and 3 need not to go for ordeal of trial, when ultimately no relief can be directed as against them.

9. In the light of the above discussion, this Court is of the considered opinion that the complaint lodged by the respondent under the Domestic Violence Act cannot be sustained as against the petitioners. Accordingly, this Criminal Original Petition allowed and the proceeding in D.V.C.No.47 of 2019 on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai, is hereby set aside. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts

To

1.The XXIII Metropolitan Magistrate,
Saidapet, Chennai,

2.Do through The Chief Metropolitan Magistrate,
Egmore, Chennai.

CRL.O.P.No.28034 of 2019
and Crl.MP.No.14962 of 2019

RK (CO)
GS (31/08/2020)

सत्यमेव जयते

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