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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P.No.17492 of 2017
and Cr1.M.P.No.10696 of 2017

1.E.Suresh Kumar

2.Soundaravalli

...Petitioners

-Vs-

T.S.Nisha

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to D.V.C.No.4 of 2016 on the file of the learned Judicial Magistrate-III, Puducherry and quash the same.

For Petitioners : Mr.S.P.Chockalingam
For Respondent : No appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in D.V.C.No.4 of 2016, filed by the respondent herein, pending on the file of the Judicial Magistrate-III, Puducherry.

2. The case of the prosecution is that the respondent got married to the 1st petitioner in Shri Dhandayuthapani Temple, Pazhani on 23.11.2012 and they were separated for the domestic violence and the respondent had filed a complaint in D.V.C.No.4 of 2016 for the maintenance under the provisions of the Protection of Women from Domestic Violence Act, 2005.

3. The learned counsel appearing for the petitioners submitted that the 1st petitioner and the 2nd petitioner are the husband and wife and they belong to Hindu community and they are blessed with two children. The respondent who claims to be the wife of the 1st petitioner belongs to the Muslim Community and her original husband's name is Mr.Nazeer and they have two



children aged about 18 years and 16 years. The respondent borrowed a sum of Rs.16,000/- from the 2nd petitioner and failed to repay the same. When the same was questioned by the 2nd petitioner, the respondent raised this strange issue of domestic violence. It is seen from the RTI report that the respondent's marriage with her original husband took place and registered in Muthavallim Mumma Mosque, Valavanur and their marriage is still in existence. They are living in their shared household. The respondent in order to escape from the burden of repaying her debts has created the fictitious Marriage Invitation and filed a case in D.V.C.No.4 of 2016. The 1st petitioner got nothing to do with this respondent and her domestic violence issue. Accordingly, prays for quashing of this petition.

4. Heard Mr.SP.Chockalingam, learned counsel for the petitioners.

5. It is seen that the relief sought for by the respondent in the domestic violence case with regard to residential rights, compensation, etc., can be made and claimed as against her husband / 1st petitioner, who is already a party in that case. The 2nd petitioner herein is the wife of the 1st petitioner and she is not living with the respondent. As such, the protection order sought for by the respondent herein in the domestic violence case against the 2nd petitioner, based on the allegations, cannot be maintained, in view of the fact that the allegations of harassment meted out by the 2nd petitioner against the respondent itself seems to be false. While that being so, there cannot be any act of any domestic violence as defined under Domestic Violence Act against the 2nd petitioner. In the absence of the same, the proceedings as against the 2nd petitioner cannot be maintained and consequently, the 2nd petitioner need not undergo the ordeal of facing a criminal trial.

6. In view of the above, this Court is inclined to quash the proceedings in D.V.C.No.4 of 2016, on the file of the learned Judicial Magistrate-III, Puducherry, insofar as the 2nd petitioner is concerned.

7. Insofar as A1/husband of the respondent is concerned, since the impugned proceedings in D.V.C.No.4 of 2016 is pending from the year 2016 onwards, it would be appropriate to direct the trial Court to complete the trial within a period of six months from the date of receipt of copy of this order. A1/husband of the respondent is directed to appear before the trial Court on the next hearing date, failing which, the respondent is at liberty to approach this Court.



8. In the result, this Criminal Original Petition stands allowed in so far as the 2nd petitioner is concerned and stands dismissed in so far as the 1st petitioner is concerned. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

rts

To

The Judicial Magistrate-III, Puducherry.

+1cc to Mr.S.P.Chockalingam, Advocate, S.R.No.18923

Crl.O.P.No.17492 of 2017
and Crl.M.P.No.10696 of 2017

VBA(CO)
KKV/13/07/2020