

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.07.2020
CORAM:
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
CRL.O.P.No.29476 of 2017
and Crl.MP.Nos.16653 & 16654 of 2017

N.Prasad
S/o.K.Nammalwar,
No.194/51, A Block,
Swami Ramalinga Colony,
Ponniamman Medu,
Chennai - 600 110.

... Petitioner

Vs.

Harithalakshmi
W/o.N.Prasad,
No.2, C Roselyn Garden Apartments,
Barnaby Road,
Kilpauk,
Chennai - 600 010.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records the proceedings in D.V.C.No.186 of 2017, on the file of the Mahila Court (Magisterial Level), Allikulam, Chennai, and quash the same in respect of the petitioner herein.

For Petitioner : Mr.P.K.Rajagobal
For Ms.K.Santhakumari
For Respondent : No appearance

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.186 of 2017 on the file of the Mahila Court, Allikulam, Chennai.

2. The learned counsel appearing for the petitioner submitted that the petitioner is the husband of the respondent herein and they got married on 27.11.2011 under the Hindu rites and customs. Due to their wed lock, they gave birth to a female child on 17.11.2012. Thereafter unfortunately, there was a misunderstanding between the petitioner and the respondent and as such, the respondent left the matrimonial home and went to her parents home in the month of July, 2014. Thereafter, in the

year 2015, the petitioner filed a petition for dissolution of marriage in O.P.No.3110 of 2015 on the file of the III Additional Family Court, Chennai. The respondent also appeared in the divorce proceedings and filed her counter on 22.08.2016. In fact, she also filed a petition in O.P.No.3796 of 2016 for restitution of conjugal rights. He further submitted that the respondent lived along with the petitioner only about 100 days and thereafter she left the matrimonial home and stayed at her parents house.

2.1. The learned counsel further submitted that in the counter filed in the divorce petition as well as the petition for restitution of conjugal rights, there is absolutely no allegations as against the family members, and now the respondent filed this present complaint under Domestic Violence Act. Therefore, it is nothing but counter complaint to escape from the legal proceedings filed by the petitioner herein. She also impleaded other family members under Domestic Violence Act, and they were no way connected in this case and also no relief sought for against them, under the Domestic Violence Act. Therefore it is nothing but clear abuse of process of law and only to harass the petitioner and his family members, the respondent instituted this case.

2.2. The learned counsel appearing for the petitioner also submitted that the present complaint was filed on 11.05.2017 before the Protection Officer under the Domestic Violence Act, after three years from the date on which the respondent left from the matrimonial home. In fact, she left the matrimonial home in the month of July, 2014 and thereafter she lodged this present complaint that too after filing the petition for restitution of conjugal rights. Hence the present complaint is barred by limitation, since it was filed after three years from the date on which, the respondent left the matrimonial home. 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. Therefore, he prayed for quashment of this proceeding.

3. Heard Mr.P.K.Rajagobal, learned Counsel appearing for the petitioner. Though notice served to the respondent, no one is appeared on behalf of her.

4. This petition has been filed to quash the proceeding initiated by the respondent herein in D.V.C.No.186 of 2017 for the relief under Sections 18 to 22 of the Domestic Violence Act. The petitioner is arrayed as first respondent in the complaint

lodged by the respondent herein. Admittedly, the petitioner got married the respondent on 27.11.2011 at Dharmaprakash Thirumana Mandapam, No.10, Raja Annamalai Salai, Purasaiwalkam, Chennai-84, under the Hindu rites and customs. It was an arranged marriage. Due to their wed lock, they gave birth to a female child on 17.11.2012. Thereafter there was a misunderstanding between them as such, the respondent left the matrimonial home in the month of July, 2014.

5. Thereafter, the petitioner filed a petition for dissolution of marriage on the ground of cruelty and other grounds in O.P.No.3110 of 2015 and the same is pending on the file of the III Additional Family Court, Chennai. After receipt of the notice, the respondent appeared before the said Court and filed counter on 22.08.2016 in O.P.No.3110 of 2015. Thereafter, the respondent also filed a petition for restitution of conjugal rights in O.P.No.3796 of 2016 on 28.09.2016 and the same also pending for trial on the file of the III Additional Family Court, Chennai. After filing the petition for restitution of conjugal rights, in the year 2017, viz., on 11.05.2017, the respondent lodged the present complaint before the Protection Officer under the Domestic Violence Act in D.V.C.No.186 of 2017. Therefore, after the period of three years from the date on which, the respondent left from the matrimonial home, the present complaint has been filed.

6. In this regard, it is relevant to cite 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. Sate 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.

7. 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 petitioner. Accordingly, this Criminal Original Petition allowed and the entire proceeding in D.V.C.No.186 of 2017 on the file of the Mahila Court (Magisterial Level), Allikulam, Chennai, is hereby quashed. Consequently, connected miscellaneous petitions are closed.

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-s/d-
Assistant Registrar

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Sub-Assistant Registrar

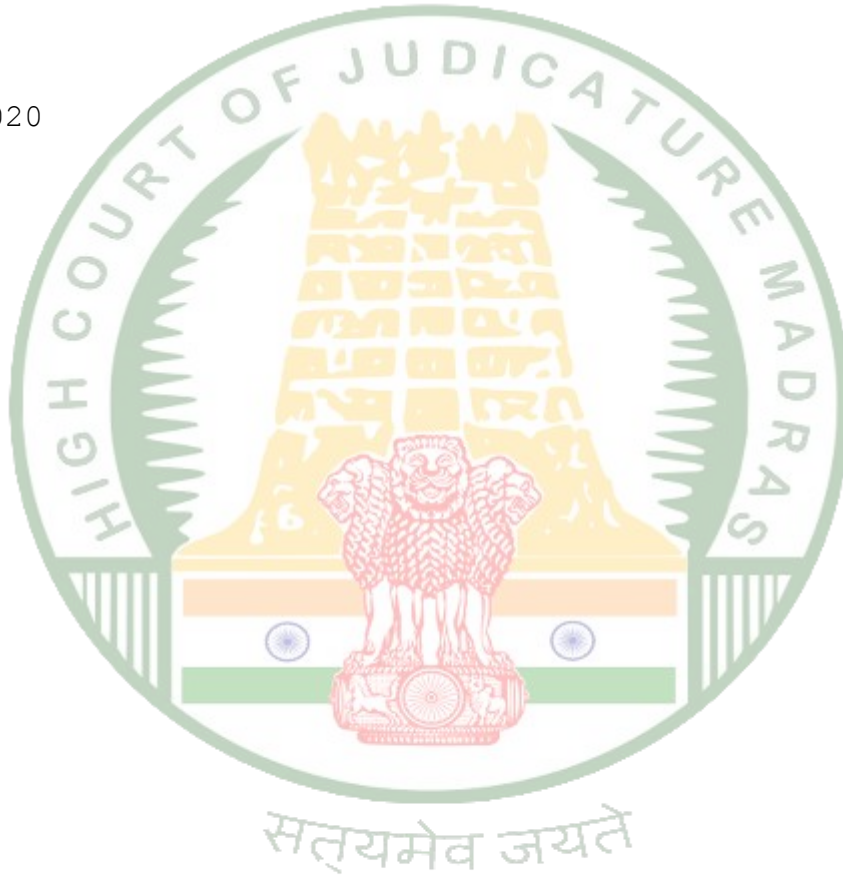
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To

The Proceeding Officer,
Mahila Court (Magisterial Level),
Allikulam, Chennai,

CRL.O.P.No.29476 of 2017 and
Crl.MP.Nos.16653 & 16654 of 2017

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