



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2020

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.O.P. (MD)No.15180 of 2016 and
CRL.M.P. (MD)Nos.7125 & 7126 of 2016

1. J.Marli
2. Akilan

... Petitioners/Respondents 4 & 5

Vs.

1. R.Rajeswari
 2. M.Poulijan (Minor)
- Rep. by mother R.Rajeswari

... Respondents/Petitioners

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records in D.V.O.P. No.25 of 2016 pending on the file of the learned Judicial Magistrate Court No.II, Nagercoil and quash the same against the petitioners.

(Prayer is amended vide order dated 13.02.2020 in Crl.M.P. (MD)No.1346 of 2020.)

For Petitioners : Mr.C.Godwin

For Respondents : Mr.G.Vairam Santhosh

O R D E R

The petitioners herein are figuring as respondents 4 and 5 in D.V.O.P.No.25 of 2016 on the file of the Judicial Magistrate No.II, Nagercoil.

2. The said petition was instituted by the first respondent herein for the offence under Section 12 of Protection of Women from Domestic Violence Act. In the said petition, the husband of the first respondent has been shown as the first respondent. The mother-in-law and the father-in-law were shown as respondents 2 and 3. The petitioners herein are figuring as respondents 4 and 5. The first petitioner is the sister-in-law, while the second petitioner is the husband of the first petitioner. The marriage between the first petitioner and the second petitioner took place in the year 2012.



The marriage between the first respondent herein and her husband Marx took place in the year 2013. The matrimonial home of the first respondent was at Thikkanamcode. The petitioners were residing at Marthandam. The petitioners were never part of shared household at any time.

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3. The Hon'ble Supreme Court held that a person who is not part of the shared household ought not to be made as respondent in the proceedings under the Protection of Women from Domestic Violence Act 2005. The petitioners' counsel brought to my notice a decision reported in 2017 (5) CTC 515 (Santineer Vincent Rajkumar V. R.Rejitha) held as follows:-

"22. When the complainant is not living under the same roof, Domestic Violence Act will not be attracted. I say so, by drawing inspiration from the parameter for scrutinizing such complaints as elucidated by the Hon'ble Supreme Court in Preeti Gupta and another V. State of Jharkhand and another, 2010 (7) SCC 667. I deem it appropriate to extract paragraph 35 in Preeti Gupta's case, which reads as follows:

'35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The Courts have to be extremely careful and cautious in dealing with these Complaints and must take pragmatic realities into consideration while dealing with Matrimonial cases. The allegations of harassment of Husband's close relations who had been living in different cities and never visited or rarely visited the place where the Complainant resided would have an entirely different complexion. The allegations of the Complainant are required to be scrutinised with great care and circumspection.' "

The ratio laid down by the Madras High Court in the aforesaid case is squarely applicable to the case on hand.

4. In this view of the matter, the impugned proceedings in this criminal original petition stand quashed as far as the petitioners are concerned. It is made clear that the impugned



proceedings will go on against the other respondents. The criminal original petition stands allowed. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar ()

/ /2020

Sub Assistant Registrar(CS)

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To:

1. The Judicial Magistrate No.II,
Nagercoil.
2. The Chief Judicial Magistrate,
Kanniyakumari at Nagarkovil.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.G.CENIL, Advocate (SR-6294[F] dated 14/02/2020)

Cr1.O.P.(MD)No.15180 of 2016

13.02.2020

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