



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.11.2020

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD)No. 18584 of 2016
and
Crl.OP(MD) No. 9284 of 2016

1. S.Sundarapandian
2. Kalaimani
3. Natarajan
4. Selvarani
5. Rukmani
6. Sundaraj

...Petitioners/R-1,3,4,6,7 & 8

-Vs-

Kamalaveni

... Respondent/ Complainant

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records in D.V.C.No.89 of 2016 on the file of the Learned Judicial Magistrate, Additional Mahila Court, Tirchirappalli and quash the same as illegal against the petitioners.

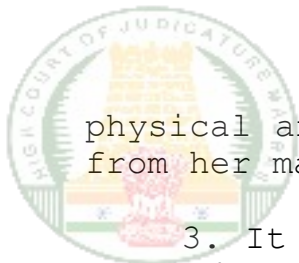
For Petitioners : Mr.Arul Vadivel Alias Sekar

For Respondent : Mr.Janath Ahamed

ORDER

This petition has been filed to quash the proceedings in D.V.C.No.89 of 2016 on the file of the Learned Judicial Magistrate, Additional Mahila Court, Tirchirappalli, the same as illegal against the petitioners.

2. It is averred in the petition that the respondent got married with the first petitioner on 06.07.1992. According to the respondent, at the time of their marriage 57 sovereigns of gold jewels were presented as dowry and the entire marriage expenditure was given by their parents. Infact, after their marriage the petitioners said to have demanded huge dowry and as such the parents of the respondent have purchased a house property for worth about Rs.5,50,000/-in favour of the first petitioner herein. While being so, the petitioners ill-treated the respondent and also subjected to



physical and mental cruelty. As such the respondent was driven out from her matrimonial home.

3. It is seen from the records that the respondent has lodged a complaint and the same was registered in Crime No.15 of 2012 on the file of the Inspector of Police, All Women Police Station, Fort Range, Trichirappalli for the offences under Section 498(A) of IPC and Section 4 of Dowry Prohibition Act. After filing final report the same has been taken cognizance in C.C. No.322 of 2003 on the file of the Judicial Magistrate Court No.III, Trichirappalli and the same was ended in acquittal by the Judgment, dated 08.11.2005. Aggrieved over the same, the respondent has preferred a criminal revision in Crl.R.C.(MD) No.108 of 206 and the same was also dismissed by this Court, on 13.09.2007. While being so, the respondent has also filed a maintenance case under Section 125 of Cr.P.C., in M.C. No.138 of 2011 on the file of the Chief Judicial Magistrate Court, Trichirappalli, the same was ordered in favour of the respondent herein and thereby ordered to pay a sum of Rs.10,000/- to the respondent herein by the petitioner. Against the same, the petitioner has preferred a criminal revision petition in CRL.R.C. No.72 of 2013 on the file of the Principal Sessions Court, Trichy and the order of maintenance was set aside. Therefore, it is clear that the respondent is living separately from the year 2000 onwards. After having been failed the two orders, the respondent had lodged a complaint under Domestic Violence Act as against the petitioners herein. The respondent already exhausted the remedy of maintenance under Section 125 of Cr.P.C., before the Chief Judicial Magistrate Court, Trichirappalli. On the very same set of allegations, again the respondent herein come forward with this impugned complaint under the Protection of Women From Domestic Violence Act, 2005. It is also curious to know that the entire alleged allegations against the petitioners have occurred before the year 2000. The Protection of Women from Domestic Violence Act came into force on 26.09.2006. However, the respondent herein exhausted her remedy under Section 125 of Cr.P.C., and also filed the impugned complaint in the year 2013 for the offence under Section 498(A) of IPC and 4 of DP Act. It is nothing, but clear an abuse of process of law.

4. In this regard, it is relevant to cite the order **dated 04.04.2019** passed by this Court in **Crl.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 Cr1.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



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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."

7. 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.

5. Admittedly, the respondent left her matrimonial home in the year 2000. After a period of 13 years the impugned complaint has been filed, after having been failed before the two Forums against the petitioners herein. Therefore, the impugned complaint cannot be sustained as against the petitioners herein. The above judgment is squarely applicable to the case on hand and as such the present case is liable to be quashed.

6. Accordingly, the Petition is allowed and the proceedings in D.V.C.No.89 of 2016 on the file of the Learned Judicial Magistrate, <https://hcservices.ecourts.gov.in/hcservices/>



Additional Mahila Court, Tirchirappalli, is hereby quashed.
Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

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/ /2020

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Judicial Magistrate, Additional Mahila Court,
Tirchirappalli.

2.The Chief Judicial Magistrate, Trichy.

3.The Principal Sessions Judge, Trichy.

+1 CC to Mr.C.ARUL VADIVEL, Advocate (SR-20907[F] dated
03/11/2020)

CrI.O.P.(MD)No.18584 of 2016
02.11.2020

VB (01.12.2020) 4P 5C