



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.01.2020

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.O.P.(MD)No.5366 of 2016

and

CRL.M.P.(MD)Nos.2663 & 2664 of 2016

1. Saroja
2. Nandhini Devi
3. Amuthvalli
4. Anandan
5. Dhanabackiam

... Petitioners/Respondents 1 to 5

Vs.

Maragatham

... Respondent/Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to D.V.O.P.No.3 of 2016 on the file of the Judicial Magistrate Court, Karaikudi, filed by the respondents herein and quash the same.

For Petitioners : Mr.C.Jeyaprakash

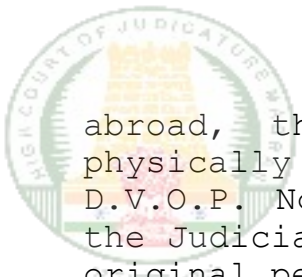
For Respondent : Mr.R.Sundar Srinivasan

O R D E R

This criminal original petition has been filed for quashing D.V.O.P.No.3 of 2016 filed by the respondent herein under Section 12 of the Protection of Women from Domestic Violence Act 2005.

2. The respondent/Maragatham got married to Ramesh Kumar on 10.11.2008 at Kottaiyur. Ramesh Kumar was abroad till recently for employment purposes. The first petitioner herein is the mother-in-law of the respondent. Petitioners 2 to 5 are the in-laws of the respondent born to the first petitioner Saroja.

3. In the D.V.O.P, Maragatham alleged that her husband Ramesh Kumar had been sending remittances from abroad right from 1997 and that the said amounts have been siphoned off by the first petitioner herein. Several other allegations have also been made against the petitioners in the D.V.O.P. complaint. One of the specific allegations is that on 30.11.2015, the petitioners herein had removed all the household articles and after Ramesh Kumar returned



abroad, the petitioners herein came back and ill-treated and physically assaulted the complainant herein. With these allegations, D.V.O.P. No.3 of 2016 was filed and the same was taken on file by the Judicial Magistrate, Karaikudi. To quash the same, this criminal original petition has been filed.

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4. Heard the learned counsel on either side.

5. The primary contention put forth by the petitioners' counsel is that the respondent is not having any difference of opinion with her husband. In fact as on date, she is very much living with him. When the complainant has not chosen to array her husband as the main respondent, it is not open to the respondent to maintain the complaint under Section 12 of the Protection of Women from Domestic Violence Act 2005 against the relatives of the husband.

6. This contention is rebutted by the learned counsel appearing for the respondent by placing reliance on the decision of the Hon'ble Supreme Court made in Crl.A.No.271 of 2011, dated 31.01.2011 (Sou. Sandhya Manoj Wankhade V. Manoj Bhimrao Wankhade and others) The Hon'ble Supreme Court in the aforesaid decision held as follows:-

"11. ... For the sake of reference, Section 2 (q) of the above-said Act is extracted hereinbelow:-

'2(q). 'respondent' means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.'

12. From the above definition, it would be apparent that although Section 2(q) defines a respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the proviso widens the scope of the said definition by including a relative of the husband or male partner within the scope of a complaint, which may be filed by an aggrieved wife or a female living in a relationship in the nature of a marriage.

13. It is true that the expression 'female' has not been used in the proviso to Section 2(q) also, but, on the other hand, if the Legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in the proviso that a complaint could also be filed against a relative of the husband or the male



partner. No restrictive meaning has been given to the expression 'relative', nor has the said expression been specifically defined in the Domestic Violence Act 2005, to make it specific to males only.

14. In such circumstances, it is clear that the legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act, 2005."

7. I carefully considered the rival contentions.

8. In the case on which heavy reliance is placed by the learned counsel appearing for the respondent, the issue was whether females can be included in the definition "respondent" in Section 2 (q) of the said Act. The Hon'ble Supreme Court while answering the said question held that the legislature never intended to exclude the female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act 2005. The question that has arisen for my consideration is quite different. The question is when the complainant has no dispute whatsoever with her husband and in fact she is residing with him, whether she can maintain a complaint against her in-laws. Section 12 of Protection of Women from Domestic Violence Act enables an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person to present an application to the Magistrate seeking one or more reliefs under this Act. The expression "aggrieved person" has been defined in Section 2(a) of the said Act which states that any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent; The expression "respondent" has been defined in Section 2(q) of the said Act as follows:-

" 2(q) 'respondent' means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner; "

9. On a overall reading of the statutory scheme, one can come to the conclusion that the primary allegation of the aggrieved person/complainant will have to be against her husband or male partner. But when the relation between the aggrieved person and her husband or male partner is quite cordial, if the complainant has any grievance against the relatives, the forum will of course have to be elsewhere and seeking the relief under the Central Act 43 of 2005 can be only be termed as an abuse of legal process.



10. D.V.O.P.No.3 of 2016 filed against the petitioners is clearly not maintainable. The impugned proceedings stand quashed. The criminal original petition stands allowed. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (AD-II)

// True Copy //

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Sub Assistant Registrar(CS)

To:

The Judicial Magistrate,
Karaikudi.

+1 CC to M/s.C.JEYAPRAKASH, Advocate (SR-1528[F] dated 10/01/2020)

+1 CC to M/s.R.SUNDAR SRINIVASAN, Advocate (SR-1297[F] dated 10/01/2020)

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