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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2021

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

CrI.R.C.No.885 of 2015

and

M.P.No.1 of 2015

1.M.Rajkannan

2.Pandiselvi

...Petitioners/ Respondent

Vs.

Selvarani

...Respondent/Petitioners

PRAYER : Petition filed under Section 397 & 401 of the Criminal Procedure Code, to call for the records of the proceedings in D.V.O.P.89 of 2014 dated 15.09.2014 on the file of the Additional Mahila Court, Magisterial Level, Salem summoning the petitioners under the Domestic Violence Act, 2005 and set aside the same.

For Petitioners : Mr.R.Hari Krishnan

For Respondents : Mr. B.Kumarasamy

O R D E R

The matter is heard through "Video Conference".

2. The respondents in D.V.O.P.No.89/2014, before the Additional Mahila Court, Salem is the revision petitioners herein. The second revision petitioner is the mother of the first revision petitioner.

3. The respondent herein/Selvarani, filed D.V.O.P.No.89/2014 alleging that she is the legally wedded wife of the first revision petitioner herein. Accordingly, she claimed certain benefits under Section 12 of Domestic Violence Act. In the petition, she has stated that she is a divorcee, having two children by name Anupriya and Dharani. The first revision petitioner already married one Velumani, by love marriage and they have one son. However, suppressing the same, he conducted marriage with the respondent and when she came to know, she made certain enquiry and he has criminally intimidated that some of the obscene photographs will be uploaded in the



internet and furthermore, he had conducted inter-religious marriage with one Priyadharshini @ Nithyanandhi.

4. A suit in O.S.No.1167/2014 is pending before the learned Magistrate Court, Coimbatore and accordingly, prayed for protection order, compensation and for recovery of articles. The complaint was taken on file and suit summons were issued for appearance under Section 13(1) of the Protection of Women from Domestic Violence Act, 2005. Challenging the issuance of summons of appearance, this criminal revision has been filed.

5. The learned counsel for the respondent would contend that since the petition is filed under Section 12 of Domestic Violence Act, this revision is not maintainable and only the revision under Article 227 of the Constitution is maintainable and relied upon the decision of this Court in 2021 (2) CTC 57 (Dr.P.Pathmanathan and others Vs. V.Monica and others).

6. The learned counsel for the petitioners would contend that he is not challenging the petition. However, he is challenging the cognizance of the petition on the ground that the respondent herein is not the legally wedded wife of the first petitioner, since no divorce has been taken place between the petitioner and Velumani and further contended that during the subsistence of his marriage with Velumani, the alleged marriage is said to have taken place and hence, she is not the legally wedded wife.

7. The main ground of challenge of the revision petitioner is that the respondent herein is not the legally wedded wife and since the marriage of the first petitioner with Velumani is in subsistence on the alleged date of the marriage as stated in the complaint. In the decision reported in (2010) 10 SCC 469 (D.Velusamy Vs. D.Patchaiammal), at paragraph No.31, the Hon'ble Apex Court has issued various direction, which reads as follows:

31. In our opinion a "relationship in the nature of marriage" is akin to a common law marriage. Common law marriages require that although not being formally married:

(a) The couple must hold themselves out to society as being akin to spouses.

(b) They must be of legal age to marry.

(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.



8. The learned counsel for the respondent would contend that whether, the marriage between the first petitioner and Velumani was in subsistence on the alleged date of the marriage with the present respondent has to be proved through legal evidence by the Velumani. The first revision petitioner is living with the respondent wife, after his divorce and the first revision petitioner is an accused in S.C.No.2/2016, Mahila Court, Salem, for the alleged offence under Section 417, 406, & 506(i) of IPC r/w Sections 10 & 9 of POCSO Act, wherein the charges have held to be proved and he was convicted and he has preferred criminal appeal in C.A.No.35/2018 in which he had been granted bail. Since, there is an appeal pending, I am not inclined to go into the merits of the case except by saying the first revision petitioner has been living for sometime with the first respondent and the nature of the marriage as mentioned in Clause 3 of the Hon'ble Supreme Court is disputed. Whether, she is legally wedded wife or not, the nature of the marriage has to be determined by the trial Court.

9. Accordingly, the Criminal revision case is dismissed with a direction to the learned Additional Mahila Court, Salem to determine the above said factual question before proceeding further in the manner known to law and pass order afresh. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

AT

To

1. The Additional Mahila Court,
Magisterial Level,
Salem.

2. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to M/s.Govind Chandrasekhar, Advocate, S.R.No.44856

+1cc to Mr.B.Kumarasamy, Advocate, S.R.No.45058

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SJ[co]

NSK 12/10/2021