

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.7280 of 2021

S.Rajeswari Petitioner/Complainant

-vs-

1. The Secretary,
Department of Treasuries and Accounts,
State of Tamil Nadu.
2. The Assistant Salary and Accounts Officer,
The Pay and Accounts Department,
Department of Treasuries and Accounts,
State of Tamil Nadu.
3. The Assistant Director of Statistics,
3rd Floor, District Collectorate Campus,
Thanthaonimalai, Karur-639 005.
4. K.Subramanian ... Respondents

Prayer: Petition is filed under Article 226 of Constitution of India to issue a Writ of Mandamus, directing the 3rd respondent to consider the representation of the petitioner dated 23.11.2020 in accordance with law.

For Petitioner : M/s.R.Nirmala Devi

For R1 to R3 : Mr.J.Pothiraj
Spl. Govt. Pleader

O R D E R

The petitioner has filed this writ petition, seeking a direction to the 3rd respondent to consider her representation dated 23.11.2020 in accordance with law.

2. Mr.J.Pothiraj, learned Special Government Pleader takes notice for the Respondents. By consent, the Writ Petition is taken up for final disposal at the admission stage itself.

3. The case of the petitioner is that the 4th respondent herein is her husband, working under the 3rd respondent and her marriage with him was solemnized on 04.12.2005 and out of wedlock, they were blessed with two children. It is the case of the petitioner that she along with her children was driven out of her matrimonial home and since then, she has been staying in her brother's house. She has filed a complaint under the provisions of The Protection of Women from Domestic Violence Act, 2005 in DVC No.49 of 2020 against her husband for monetary amount and the 4th respondent has been taking all steps to dispose of his properties so as to defeat her legal claims. It is further case of the petitioner that though the 4th respondent was to retire on 30.06.2020, pursuant to the extension of the age of retirement of employees by the Government, his retirement was postponed and therefore, she made a representation dated 23.11.2020 to the 3rd respondent with a request not to release pension and other retirement benefits to the 4th respondent. Since there was no response on the representation dated 23.11.2020, she is before this Court, seeking for disposal of her representation.

4. The petitioner, who is the wife of 4th respondent, seeks for withholding of pensionary and other retirement benefits of R4, which is impermissible, as the retiral benefits must be disbursed to the employee concerned as long as he alive. The petitioner has stated that she has filed a case under the provisions of Domestic Violence Act against R4, in addition to filing a divorce petition for divorce.

5. Now-a-days, initiation of proceedings under the Domestic Violence Act, which is a self contained Code has become common. Though the object of enactment is to protect the genuine victims of domestic violence, irrespective of genders, it is being highly misused. The legislators were conscious of the fact that all of a sudden if a criminal law is enforced on the husband and his relatives, certainly that might boomerang and have deliterious effect in the matrimonial relationship between the husband and wife. The object of the Act is that the victim lady should be enabled by law to live in the matrimonial family atmosphere in her husband / in-laws' house and it is not the intention of the said enactment to enable the lady to get snapped once and for all her relationship with her husband or the husband's family. The proceedings at the first instance is civil in nature. When a person is forced to fear for punishment by way of misuse of the provisions of a law, there will

certainly be a distress, restlessness, panic, etc., in the mind of that person and filing cases one after the other would constitute a stumbling block for arriving at a conclusion in summary proceedings. The famous adage "Too much of anything is good for nothing" should not be forgotten. The notable flaw in this law is that it lends itself to such easy misuse that affected persons will find it hard to resist the temptation to "teach a lesson" to their counterpart and will file frivolous and false cases.

6. It is quite often said that behind every successful man, there is a woman and according to me, it is not a single woman, but women, namely, mother and wife, who are two eyes of a man. In a family, wife is a root and husband is a trunk and other members of a family are branches. If the root is damaged, the entire family will get ruined. It is also equally important for a man to provide a sense of safety and security to his better half, who joined hands with a lot of expectations. Though this Court is not a fact finding authority to examine as to who is at fault, in my view, the petitioner must have thrown all her egos for the welfare of her children, instead of foisting cases on the 4th respondent one after the other.

7. The Hon'ble Supreme Court in the case of Sushil Kumar Sharma vs. Union of India and others (Writ Petition (civil) 141 of 2005), decided on 19.07.2015, while describing the provisions of anti-dowry law (498-A) a "Legal Terrorism", has held as follows:

".....The object of the provision is prevention of the dowry meance. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bonafide and have filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignomy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work. As noted the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not assassins' weapon. If cry of "wolf" is made too often as a prank assistance

and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any strait jacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre- conceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumption that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumption are drawn which again are reputable. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that in innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally indisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.

8. In this case, the petitioner's apprehension is that her husband / R4 is trying to dispose of all his assets and to disburse his terminal benefits to other benefits and in that event, she and her children will not have any means to sustain. This Court cannot issue a direction on the basis of mere surmises and conjunctures and it appears that it was the petitioner, who made a stumbling block for arriving at a consensus, by making a cry of "wolf" as a prank, as observed by the Apex Court (supra). Since the 4th respondent is in employment, the issue relating to release or stoppage of his monetary benefits will have to be decided by the concerned Authority. A bare reading of the affidavit shows that the DVC Act has been used by the petitioner as a tool to wreak vengeance against his husband and by way of filing this writ petition, the petitioner is trying to pressurize his husband to come to a settlement in one way or the other. If the relief sought for by the petitioner, namely, disposal of her representation dated 23.11.2020 is granted, it would definitely amount to creating further round of litigation.

9. Hence, finding that there is no substance in the case of the petitioner, the Writ Petition is dismissed as devoid of merits.

10. It is made clear that whatever observation made herein-above is only for the purpose of disposal of this petition and it will have no bearing on other cases pending between the parties and the parties have to let in evidence therein to establish their respective cases. No costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To:

1. The Secretary,
Department of Treasuries and Accounts,
State of Tamil Nadu.
2. The Assistant Salary and Accounts Officer,
The Pay and Accounts Department,
Department of Treasuries and Accounts,
State of Tamil Nadu.
3. The Assistant Director of Statistics,
3rd Floor, District Collectorate Campus,
Thanthaonimalai, Karur-639 005.

+1cc to Ms.Nirmala Devi, Advocate, S.R.No.17854
+1cc to the Government Pleader, S.R.No.18473

W.P.No.7280 of 2021

UM(CO)
CB(08/07/2021)

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