

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2021

CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD) No.1658 of 2021

and C.M.P.No.12864 of 2021

(Through Video Conference)

1) D.Nagarajan

2) D.Kalaivani

3) M.Devanathan

.. Petitioners

Versus

Deepa

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records and to strike off the complaint made by the respondent in D.V.C.No.06/2019 which is pending before the Judicial Magistrate, Gudiyatham.

For Petitioner : Mr.P.Malarvanan

ORDER

This Civil Revision Petition is filed to strike off the complaint made by the respondent in D.V.C.No 6 of 2019, which is pending before the learned Judicial Magistrate, Gudiyatham.

2. Learned counsel for the petitioners submitted that the marriage

between the first petitioner and respondent was solemnized on 15.11.2015. Thereafter, they were living happily. The respondent, due to wed lock got conceived and she had been to her parents' house for delivery. After giving birth to a girl child, inspite of the request made by the first petitioner and also by way of a legal notice on 07.10.2016 inviting the respondent to join with him in matrimonial home, the respondent has not chosen to join with him. He further submitted that the respondent sent a reply dated 15.10.2016 wherein she did not say anything negative about the petitioners or her married life. Though she expressed her readiness and willingness to come and live with the petitioner after 3 months from the date of delivery, she had not done so. The first petitioner visited the respondent's family house for taking his wife with him. While so, her parents ill-treated him and refused to send the respondent with him. In this regard, he lodged a complaint with Arakonam Town Police Station on 23.02.2018.

3. The respondent had also given a complaint dated 25.02.2018 in All Women Police Station, Arakonam. Meanwhile, this Domestic Violence case under Section 6 of 2019 is registered.

4. Learned counsel for the petitioners submitted that the averments made

in the notice and reply dated 07.10.2016 and 15.10.2016 respectively show that, the first petitioner and respondent were living happily. It was the respondent who refused to join the matrimonial home. However, the present D.V.C.No.6 of 2019 is filed with false allegations. Therefore, this proceedings in D.V.C.No.6 of 2019 has to be set aside. He further submitted that the petitioner and his parents, who are very old, are also unnecessarily roped in only to harass them, and are shown as respondents in D.V.C.No.6 of 2019. For all these reasons, the learned counsel for the petitioners prays for striking off the proceedings in D.V.C.No.6 of 2019.

5. The reading of the notice dated 07.10.2016 shows that the petitioners found fault with the behavior of the respondent and her irresponsible attitude towards the petitioner and his parents. He said that she used to talk with somebody over mobile phone throughout day and night by closing the door and she never cared to do the domestic work. Only his mother used to cook food. The respondent pretends that she is affectionate towards her husband and his parents. She left the matrimonial home on 20.03.2016 and had not returned thereafter. Therefore, he gave a notice inviting her to join the matrimonial home, else to go for legal separation, including divorce by mutual consent.

6. In the reply dated 15.10.2016, the respondent denied all those allegations made against her. It is her case that she was admitted in the hospital on 16.10.2016 for delivery and the delivery date was fixed between 16.10.2016 to 20.10.2016 and this was informed to the petitioner. Finally, he said that she was ready and willing to come and live with him after three months from the date of delivery. The exchange of notices, especially, the notice sent by the first petitioner shows that he has some grievance against the respondent with regard to the misbehavior and irresponsible attitude and lack of interest shown in domestic work. Subsequently, it is seen from the complaints dated 23/02/2018 and 25/02/2018 given by the first petitioner and the respondent respectively, to the police, the issues between the spouses surfaced.

7. It is claimed in the complaint dated 25/02/2018 that the first petitioner has harassed the respondent seeking for dowry and motor vehicle. The petitioner or his parents have not taken care to see the girl child born to her. So the efforts made by the respondent and her parents to join with the petitioner has not yielded positive result. They were sent out of the home, abused and criminally intimidated. Section 3 of the Domestic Violence Act defines what is domestic violence.

"3. Definition of domestic violence—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. Explanation I.—For the purposes of this section,—

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) “verbal and emotional abuse” includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) “economic abuse” includes -

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household. Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration. ”

8. This Section makes it clear that if there is any abuse which results in

harm, injury, endangering the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; it amounts to domestic violence.

9. As per the facts narrated above, the respondent alleges that there was demand of dowry, motor cycle, harassment, abuse, threatening at the hands of the petitioner and his family members. It *prima facie* shows that there are materials available to proceed against the petitioners under Protection of Women from Domestic Violence Act, 2005. Therefore, this Court is not inclined to strike off the complaint made by the respondent in D.V.C.No.6 of 2019, which is pending on the file of the learned Judicial Magistrate, Gudiyatham.

10. Learned counsel for the petitioners submitted that this complaint is barred by Limitation and also submitted that his parents are very aged and old. Taking note of the submission made, the petitioner is given liberty to raise the

G.CHANDRASEKHARAN, J.,

sts/mn

issue of Limitation before the learned Judicial Magistrate, Gudiyatham. Considering the fact that the parents of the petitioner are aged, their appearance before the learned Judicial Magistrate, Gudiyatham is dispensed with, unless it is specifically required by the learned Judicial Magistrate, Gudiyatham for proceeding further with the case. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11. The learned Judicial Magistrate, Gudiyatham is directed not to be carried away with the observations made in this petition and decide the case independently on the materials produced by the petitioner during the course of enquiry.

19.08.2021

Speaking Order / Non-Speaking Order
Index : Yes / No
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To:
The Judicial Magistrate,
Gudiyatham.

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Order made in
C.R.P. No.1658 of 2021