

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2021

CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD) No.1670 of 2021

and C.M.P.No.12931 of 2021

(Through Video Conference)

1) M.Vijay Vikrama Baskar

2) M.Marimuthu

3) Kumuthavalli

.. Petitioners

Versus

S.Saranya

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records pertaining to the proceedings in DVA No.3 of 2021 on the file of the Judicial Magistrate, Madukkarai and to set aside the same.

For Petitioner : M/s.R.Thenmozhi

ORDER

This Civil Revision Petition is filed to call for the records pertaining to the proceedings in D.V.A.No.3 of 2021 on the file of the learned Judicial Magistrate, Madukkarai and to set aside.

2. The learned counsel for the petitioners submitted that H.M.O.P.No.170 of 2020 was filed by the petitioner against the respondent under Section 13(1)(i-a) of Hindu Marriage Act on the file of the Sub Court, Palani. It is further submitted that a transfer petition was filed for transferring this H.M.O.P. to the Family Court at Coimbatore and the same was allowed. The case is yet to be transferred to Coimbatore. Meanwhile, it is submitted by the learned counsel for the petitioners that the present proceedings in D.V.A.No.3 of 2021 is initiated by the respondent only with a view to harass the petitioners. Therefore, the proceedings has to be necessarily set aside.

3. Perusal of the records in D.V.A.No.3 of 2021 shows that this application was filed by the respondent herein against the first petitioner / husband and his parents directly before the learned Judicial Magistrate, Madukkarai. It is alleged by the respondent that the marriage between the first petitioner and the respondent was solemnized on 12.06.2013. The respondent was provided with 25 sovereign of gold jewels, Rs.2,00,000/- worth household articles apart from providing five sovereign gold chain, two sovereign gold bracelet and ½ sovereign ring to the first petitioner and a sum of Rs.1,50,000/- was paid as cash. The jeweleries of the respondent, except five sovereign, were received by the third petitioner and are was kept under her

custody. The respondent is a B.E. Graduate. Due to wed-lock, the respondent got conceived. The respondent noticed that her husband / first petitioner herein was taking certain tablets and came to now that the first petitioner was suffering from mental health issues. When she questioned about the mental health conditions of the first petitioner with his parents, they scolded her that she should not reveal the mental health condition of the first petitioner to anyone else and threatened her with dire consequences.

4. On 06.11.2014, the respondent delivered a female baby Amirtha Vijay. It is the allegation of the respondent that the first petitioner compelled the respondent to indulge in unnatural sexual activities. He used to hit her badly and cause bleeding injuries. Not only that, he used to cut himself with blade. Even though the respondent complained about the activities of her husband to his parents, they were not taking any steps to correct the first petitioner. On 30.09.2019 the first petitioner made the respondent nude and hit her badly by tying her hands and legs. A case was given in Palani All Women Police Station and it was registered as C.S.R.No.334 of 2019 and subsequently, a case in Crime No.23 of 2019 under sections 498-0A, 406, 294 (b), 506(i) of the Indian Penal Code and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 was registered against the first petitioner and his parents.

5. In Crl.O.P.No.18149 of 2019, the Court ordered the first petitioner to pay a sum of Rs.20,000/- as maintenance to the respondent. The first petitioner owns several immovable properties and now, steps are being taken for changing the ownership of the properties. The child, Amirtha Vijay is aged about six years. The respondent's parents alone are taking care of the respondent and her daughter. The first petitioner is working as a Software Engineer and earning a salary of Rs.1,00,000/-. A sum of Rs.2,00,000/- is being earned from the immovable properties. Therefore, the respondent filed a petition under Section 12 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 for the relief claimed in the application.

6. The narration of the facts alleged by the respondent shows that there are serious allegations made against the first petitioner and his parents with regard to demand of dowry and related harassment. The specific allegations against the first petitioner is that he forced the respondent to indulge in unnatural sexual activities and on one particular day, he removed her dress and tied her hands and legs and had beaten her severely. There are enough materials to go for an enquiry in this case, Section 3 of the Domestic Violence Act defines what is Domestic Violence. For the purpose of this Act, what is physical abuse, sexual abuse, verbal and emotional abuse and economic abuse

have all been defined.

"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. "

7. It is seen from this Section that if anyone commits harm, injure, endanger the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so, including physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; it amounts to causing domestic violence.

8. Learned counsel for the petitioners submits that the allegations made in the application are totally false and not correct. The claim as to whether the allegations made in the application are true or false, is a matter to be considered by recording the evidence both oral and documentary. As of now, it is seen that the *prima facie* materials available to proceed further with the enquiry in D.V.A.No.3 of 2021. Therefore, this Court is not inclined to accede to the request made by the learned counsel for the petitioners to call for the records in D.V.A.No.3 of 2021 to set aside the proceedings. In this view of the matter, this Civil Revision Petition is dismissed. No costs. However, considering the fact that the parents of the petitioner are aged, this Court directs the personal appearance of the parents, who are respondents 2 and 3 in D.V.A.No.3 of 2021

G.CHANDRASEKHARAN, J.,

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may be dispensed, unless it is necessarily warranted in the course of the
enquiry. Consequently, connected miscellaneous petition is closed.

9. Learned Judicial Magistrate, Madukkarai is directed not to carry away
by the observations made in this order and decide the case independently on
the basis of the materials produced before him and on his independent
assessment of the matter.

19.08.2021

Speaking Order / Non-Speaking Order
Index : Yes / No

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To:
The Judicial Magistrate,
Madukkarai.

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Order made in
C.R.P.(PD)No.1670 of 2021