

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.09.2020
PRONOUNCED ON : 18.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.5611 of 2014
and
M.P.Nos.1 & 2 of 2014

S.Kathiravan ... Petitioner /Respondent

Vs.

S.Suguna ... Respondent/Petitioner

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the complaint filed by the respondent under Section 12 of Domestic Violence Act, 2005, for the relief under Sections 18, 19, 20, 22, 23 of Domestic Violence Act, 2005 in M.C.No.04 of 2014, pending before the Hon'ble XXIII Metropolitan Magistrate Court at Saidapet, Chennai - 600 015 and pass appropriate order.

For Petitioner : Mr.A.Ramaswamy

For Respondent : Mr.R.Karunakaran

O R D E R

This Criminal Original Petition has been filed praying to quash the complaint filed by the respondent under Section 12 of Domestic Violence Act, 2005, for the relief under Sections 18, 19, 20, 22, 23 of Domestic Violence Act, 2005 in M.C.No.04 of 2014, pending on the file of the XXIII Metropolitan Magistrate Court at Saidapet, Chennai.

2. The case, in nutshell, is that the petitioner is the husband and the defacto complainant is the wife. The petitioner married the defacto complainant on 26.06.1998 at Thiruverkadu Karumariamman Temple and the said marriage was registered on 15.07.1998. After the marriage, both of them lived at Porur for one year and then, they shifted the home at Kattupakkam. Latter, the activities of the husband / A1 is

changed and when the defacto complainant questioned about the activities of her husband, he beaten her with cruel manner, threatened with dire consequences and driven out defacto complainant - wife from the matrimonial home. Neglected to take care. Hence, the above case has been registered against the petitioner.

3. The learned counsel appearing for the petitioner submitted that one Suguna D/o.(Late) Subramani, the respondent herein, claiming as wife of the petitioner, had given a complaint on 06.05.2010, against the petitioner before the All Woman Police Station, Poonamalee, Chennai, which was registered in Crime No.04 of 2010, for the alleged offences under Sections 498-A r/w. 506(ii) of IPC. The Inspector of Police, All Women Police Station, after investigation, filed the final report before the learned Judicial Magistrate No.1, Poonamallee, Chennai, which was taken on file as C.C.No.348 of 2010.

4. The learned counsel for the petitioner further submitted that the petitioner filed a Maintenance Case in M.C.No.04 of 2014, pending on the file of the XXIII Metropolitan Magistrate Court at Saidapet, Chennai, under Section 12 of Domestic Violence Act, 2005, for the relief under Sections 18, 19, 20, 22, 23 of Domestic Violence Act, 2005. The learned Magistrate failed to consider the reply Notice, dated 10.09.2011, issued by the petitioner and the relationship itself is disputed. The learned Judicial Magistrate acted in biased manner and simply decides the matter, without going into the merits of the case. Hence, the learned counsel filed this petition for quashment.

5. The learned counsel for the respondent - wife submitted that the petitioner married the respondent / defacto complainant on 26.06.1998 at Thiruverkadu Karumariamman Temple and the said marriage was registered on 15.07.1998. After the marriage, both of them lived at Porur for one year and then, they shifted the home at Kattupakkam. Since there is a change in the activities of the husband / A1, the defacto complainant questioned the same, the petitioner beaten her in cruel manner, threatened with dire consequences and driven out the defacto complainant - wife from the matrimonial home.

6. Adding further, the learned counsel for the respondent - wife submitted that in view of the conduct displayed by the petitioner-husband, the respondent-wife felt convinced that the petitioner-husband had no intention to live with her, as married wife and lead marital life and therefore, the respondent-wife is having a right to claim protection and maintenance. It was on the aforesaid contentions the learned counsel for the respondent sought the dismissal of the Criminal Original Petition.

7. I have heard the learned counsel appearing on either side and perused the materials available on record.

8. The primordial contention of the petitioner is that the respondent for similar allegation gave a complaint before All Women Police Station, Poonamallee, for offence under Sections 498 (A), 494 r/w 506 (ii) IPC, after investigation charge sheet filed in C.C.No.348 of 2010. The Domestic violence complaint latter was filed on 02.01.2014. The Judicial Magistrate-I, Poonamallee, after full fledged trial, had acquitted the petitioner by Judgment dated 17.05.2016. In view of the same, the Domestic violence case in M.C.No.4 of 2014 to be quashed. Further contended that the petitioner had no marriage with the respondent and the Marriage Certificate, dated 16.07.1998, is a got up document. The contention of the petitioner cannot be accepted and rejected for the reason that the finding of Judicial Magistrate-I, Poonamallee in C.C.No.348 of 2010 will no way bar in prosecution of petitioner under Domestic Violence Act. The ingredients and relief are not same. Domestic Violence Act is a benevolent Act, brought in giving relief to the affected women folks. The orders herein or protection orders for their welfare and life. The question of genuineness of the Marriage certificate cannot be gone into in a quash petition. Since it is a disputed document, and only during the trial it has to be tested and proved. The complaint of the respondent has been enquired by the Protection Officer, who had conducted an enquiry, thereafter only cognizance taken. The points raised by the petitioner are factual in nature, which has to be decided during trial. In view of the same, the quash petition stands dismissed. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

MPK

To

1.The XXIII Metropolitan Magistrate
Saidapet, Chennai - 600 015

2.The Judicial Magistrate No.I,
Poonamallee

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3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.RAMASAMY, Advocate, S.R.No.17225

+2cc to Mr.R.KARUNAKARAN, Advocate, S.R.No.17224

NR (CO)
KK 13.04.2021

Cr1.O.P.No.5611 of 2014



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