



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2021

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRP (PD) (MD) .No. 931 of 2021 and

CMP (MD) .No.5256 of 2021

WEB COPY

1.R.Muthuraja
2.Rajakani
3.Mahadevi
4.Kavitha
5.Vellaichamy
6.Murugesan
7.Manivannan
8.Sangeetha

...petitioners / respondents

Vs.

M. Rajeswari

... Respondent / petitioners

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the DVOP.No.4 of 2020 on the file of the Judicial Magistrate, Thirupuvanam, Sivagangai District.

For petitioners : Mr.B. Prahalad Ravi

O R D E R

This Civil Revision has been filed seeking orders to strike off the petition lodged in DVOP.No.4 of 2020 on the file of the Judicial Magistrate, Thirupuvanam, Sivagangai District.

2. Admittedly, the marriage between the first petitioner and the respondent was solemnized on 29.06.2014.

3. The learned counsel for the revision petitioners would submit that the first petitioner has already filed a petition in HMOP.No.185 of 2018 (re-numbered as HMOP.No.39 of 2019), claiming divorce and that the learned Subordinate Judge has already granted divorce on 23.10.2019 and that the respondent by suppressing the same has initiated the proceedings under the Domestic Violence Act. He would further submit that the respondent has claimed the reliefs mainly against the first petitioner, but, she has impleaded the other petitioners 2 to 8 purposely and wantonly to harass them. He would further submit that there is no domestic relationship between the first petitioner and the respondent as their marriage was already dissolved, that the very invoking of the provisions of Domestic Violence Act is not maintainable and that the learned Magistrate without considering the same, has taken the complaint on file mechanically.

<https://hcservices.ecourts.gov.in/hcservices/>

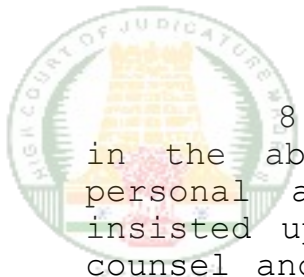


4. In support of his contention, the learned counsel for the petitioners has relied on the decision of the High Court of Gujarat at Ahmedabad reported in **CDJ 2019 GHC 351 (Kanjibhai Bhanabhai Paramar Vs. Urmilaben Kanjibhai Parmar and others)** and argued that after granting of divorce, the provisions of the Domestic Violence Act cannot be invoked against the husband and his family members. In that case, wife after getting divorce from the first petitioner 28 years before, contracted 2nd marriage with another person and that since the domestic relationship between the erstwhile husband is not subsisting, the trial Court has held that after divorce, who has re-married, cannot invoke the provisions of the said Act against her erstwhile husband. In the case on hand, admittedly, the first petitioner has obtained ex parte decree on 23.10.2019 and it is not known as to whether any application for setting aside the ex parte order or appeal is pending.

5. No doubt, the revision petitioners, as per the judgment of this Court rendered by **Hon'ble Mr. Justice. N. Anand Venkatesh., in Crl.O.P.Nos.28458, 16411, 33643 of 2019 (Batch), dated 18.01.2021** have filed the present revision invoking the jurisdiction of this Court under Article 227 of the Constitution of India. In the said judgment, the Hon'ble Judge has laid down certain guidelines and procedures to be followed / complied with by the litigants and the Court, while dealing with the complaint initiated under the Domestic Violence Act.

6. In the present case, the petitioners have not approached the learned Magistrate as per the guidelines issued, but they have straightaway approached this Court hurriedly. It is pertinent to note that when there has been a patent perversity in the orders of the Tribunals and Courts or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted, High Court can interfere in exercise of its power of superintendence under Article 227 of the Constitution of India.

7. It is settled law that the High Court cannot, at the drop of a hat, in exercise of its power of superintendence, under Article 227 of the Constitution, interfere with the proceedings or orders of Tribunals and Courts nor can it act as a Court of appeal. The existence of alternative mode of redressal would operate as a restraint on the exercise of this power by the High Court. To put it in short, the jurisdiction has to be very sparingly exercised. In the case on hand, even assuming for a moment, if this Court is not inclined to interfere with the proceedings of the trial Court, it cannot be said that the same would result in miscarriage of justice. Considering the above, this Court is not inclined to admit the Revision.



8. It is pertinent to mention that in the guidelines issued in the above Judgment, it has been specifically observed that personal appearance of the respondent shall not be ordinarily insisted upon, if the parties are effectively represented through counsel and that Form VII of Domestic Violence Act, 2006, makes it clear that the parties can appear before the Magistrate either in person or through duly authorised counsel. Moreover, even if the respondent has failed to appear either in person or through his counsel, the Magistrate can only proceed to set them ex parte and then, proceed to decide the application. Considering the above, it is clear that it is not mandatory for the revision petitioners to appear personally for all the hearings.

9. In the result, the Civil Revision Petition is dismissed and the revision petitioners are at liberty to approach the learned Judicial Magistrate, as per the guidelines issued in the Judgment above referred. Further, the learned Judicial Magistrate is directed not to insist the personal appearance of the petitioners as per the guidelines referred above for the hearings in which the personal appearance of the petitioners is not necessary. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

trp

To

The Judicial Magistrate, Thirupuvanam, Sivagangai District.

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