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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2021

CORAM :

THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

Crl.O.P.(MD)No.9232 of 2020

and

Crl.M.P.(MD)Nos.4323 and 4324 of 2020

1.J.I.J.Justin
2.Shanthi @ Shanthi Fernand
3.Praveena
4.Alphonse @ Thettaravu Alphonse ...Petitioners/Respondents 2 to 5
/Vs./
Agno ...Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in D.V.C.No.2 of 2020 on the file of the learned Judicial Magistrate No.III, Thoothukudi and quash the same.

For Petitioners :Mr.S.Deenadhayalan
For Respondent :Mr.A.Thiruvadi Kumar

ORDER

The present petition has been filed under Section 482 of the Code of Criminal Procedure seeking to quash the proceedings in D.V.C.No.2 of 2020 on the file of the learned Judicial Magistrate No.III, Thoothukudi.

2. In the decision in Crl.O.P.No.28458 of 2019 batch, a Hon'ble Single Judge of this Court vide orders dated 18.01.2021 after surveying various Supreme Court Decisions clearly held that quashing the proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 is not maintainable under Section 482 of the Code of Criminal Procedure. He has further held that a petition under Article 227 of the Constitution of India alone would be maintainable if it is shown that the proceedings before the Magistrate suffer from a patent lack of jurisdiction. The relevant paragraph is extracted hereunder:

"50. It follows that in view of the law laid down in S.A.L Narayan Row and Another vs. Ishwarlal Bhagwandas reported in AIR 1965 SC 1818 and Ram Kishan Fauji vs. State of Haryana reported in (2017) 5 SCC 533, that the character of a proceeding under the D.V Act, in so far as it relates to the reliefs under Sections 18 to



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23, does not become criminal in character merely on account of the procedure under the Cr.P.C adopted by the Magistrate. In view of the foregoing discussion, the inevitable conclusion is that a petition to quash an application under Section 12 of the D.V. Act is maintainable only by way of a petition under Article 227 of the Constitution and not under Section 482, Cr.P.C."

3. In the instant case, if the petitioners are aggrieved by the orders passed by the learned Judicial Magistrate No.III, Thoothukudi, they can file a petition under Article 227 of the Constitution of India, but definitely not under Section 482 of the Code of Criminal Procedure including the question of limitation within which Domestic Violence Original Petition can be filed by the aggrieved persons.

4. In view of the same, this Criminal Original Petition is dismissed. While, the personal appearance of the petitioners is dispensed with, the petitioners are directed to appear before the concerned Judicial Magistrate, whenever their presence is required. Accordingly, Crl.M.P.(MD)No.4324 of 2020 is ordered. Consequently, Crl.M.P.(MD)No.4323 of 2020 is dismissed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1.The Judicial Magistrate No.III, Thoothukudi.
- 2.The Chief Judicial Magistrate, Tuticorin.

Crl.O.P. (MD)No.9232 of 2020

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