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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.08.2021

Delivered On: 18.08.2021

CORAM

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

Crl.O.P.(MD).No.15380 of 2020

and Crl.M.P.(MD).No.7471 & 7472 of 2020

Dr.Alagesan

.. Petitioner/Respondent

Vs.

Vellaiammal

.. Respondent/Petitioner

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to the case in D.V.C.No.6 of 2020, pending on the file of the learned Judicial Magistrate, Manapparai, Trichy District and quash the same against the petitioner.

For Petitioner : Mr.P.Gunasekaran

For Respondent : Mr.AN.Ramanathan

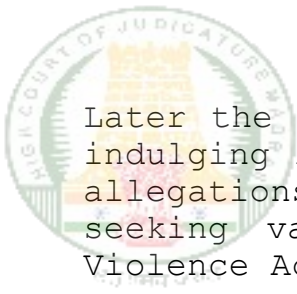
ORDER

This petition has been filed to quash the proceedings in D.V.C.No.6 of 2020, pending on the file of the learned Judicial Magistrate, Manapparai, Trichy District.

2.The case of the respondent as detailed in the petition before the trial Court are as follows:-

2.1.The complainant, who is the respondent, was working as a nurse in the hospital run by the petitioner herein. During 1996, in the course of time, they developed intimacy and as a result of which, the petitioner promised her to marry and the marriage was also performed, on 23.01.1998, in Thirupathur. Since both the parties belonged to separate community, the marriage was performed without the presence of the relatives. Because of their marriage, a male child called Gopinath was also born to them, on 20.12.2001. Thereafter, only it came to notice that this petitioner was also having affair with a Doctor and they got also children. Because of that trouble arose. This petitioner also settled a property in favour of the above said Gopinath worth about Rs.40 lakhs. Later, he cancelled the same, on 14.03.2014. Even though the respondent and the child was settled by the petitioner in Thuvarankurichi, he avoided to visiting the house of the respondent.

2.2.Thereafter, the respondent tried to contact the petitioner, but each and every time, he refused to contact them. On 26.09.2020, at about 10.30 p.m., this petitioner along with men came to the house of the respondent and caused damage to the home and abused in every language. They also criminally intimidated them.



Later the respondent came to know that the petitioner is habitually indulging in this sort of illegal activities with women. With this allegations, the respondent filed a petition before the trial Court seeking various relieves under Section 12 (1) of the Domestic Violence Act along with Section 125 (1) of Cr.P.C.

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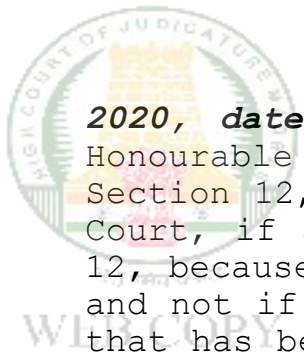
2.3. Seeking quashment of the same, this petition has been filed by the petitioner herein, mainly on the ground that there was no valid marriage between the parties and the petitioner was married to one Doctor namely V.Sheela in the year 1990. Because of their marriage, they begot two daughters and one son. The respondent married one Raju @ Athappan and through him only the above said Gopinath was born. Except the fact that she was working as a nurse in the petitioner's hospital, there was no connection between them.

2.4. The respondent by forged documents sold the property of the petitioner in December 2019. Because of that trouble was arose between them on 26.09.2020. So, a case has been registered against the respondent and others under the various provisions of IPC. Only as a counter blast to the above said criminal case, this petition came to be filed.

3. Heard both sides.

4. The maintainability of this petition before this Court has been questioned by this Court, in view of the Judgment of this Court in ***Dr.P.Pathmanathan and others Vs. Smt. V.Monika and another*** passed in ***Crl.O.P.No.28458 of 2019 and batch, dated 18.01.2021***, wherein, it has been categorically held that the petition under Section 12 of Domestic Violence Act is civil in nature, against which, a petition under Section 482 Cr.P.C. will not lie. Only in exceptional circumstances, if at all Article 227 of Constitution of India, can be invoked. So on that basis, the arguments has been advanced on either side.

5. The learned counsel for the petitioner would also cite a recent judgment in Tr.C.M.P.SR.No.15785 of 2021 in D.V.C.No.43 of 2019, dated 01.04.2021. This judgment arose out of a question, which was raised by the Registry regarding the maintainability of transfer petition seeking transfer of a case, which has been pending on the file of XVII Metropolitan Magistrate, Saidapet to the V Additional Family Court, Chennai. So this Court once again went through the various provisions of the Act and finally came to the conclusion that the question raised by the Registry regarding the maintainability of the petitioner is sustained and is held that the proceedings under Section 12 pending before a Magistrate Court involves criminal consequences and so it cannot be transferred to Family Court. A distinction has also been drawn by the Delhi High Court in Judgment reporting in ***Sandeep Aggarwal Vs. Viniti Aggarwal in Transfer Petition (Crl.).No.19 of 2020 in Crl.M.A.No.10182 of***



2020, dated 07.04.2021, wherein, a similar situation arose. The Honourable High Court has held that if a petition is filed under Section 12, it cannot be transferred to a civil Court like a Family Court, if a party choose to file a separate petition under Section 12, because as per Section 26 the relief can be granted by any court and not if the petition filed under Section 12. So the distinction that has been drawn by the Honourable Delhi High Court can be taken as a supporting judgment to decide this matter. So taking this angle and issue, the contention that has been raised by the petitioner, we can easily come to the conclusion that Section 482 Cr.P.C. cannot be invoked for the purpose of quashing the complaint.

6.The learned counsel for the petitioner relied upon the Judgment of the Honourable Supreme Court in **Kamlesh Devi Vs. Jaipal and others in SLP(Crl.) Diary No.34053 of 2019, dated 04.10.2019** for the purpose of argument that absolutely there is no material on record to show that the case involves Domestic Violence. But, as I said earlier, the marriage between the parties is disputed by the petitioner and it is to be decided on evidence. Where there was any consequential Domestic Violence committed by the petitioner can also be a matter of evidence and proof. So this judgment will not give any help to the petitioner.

7.Similarly, the contention of the petitioner that as been decided in the order passed in Tr.C.M.P.SR.No.15785 of 2021, which is purely criminal in nature, section 482 Cr.P.C. will lie, cannot be taken into account. Because the matter has been decided on its own merits involved in the issue of transfer. Similarly, the case in **N.Prasad Vs. Haritha Lakshmi in Crl.O.P.No.29476 of 2017, dated 20.07.2020**, also will not give any help to the petitioner. Because, it was decided on the basis of limitation. Herein, no such ground has been raised in this petition. Moreover, only subsequent to this judgment the judgment in **Dr.P.Pathmanathan** referred earlier has been decided. So this Judgment also will not help the case of the petitioner.

8.Even otherwise, if we take the merit of the case, it is the case of the petitioner that there was no marriage between the parties. But it is the case of the respondent to the effect that she was working as a nurse in the hospital run by the petitioner and because of the intimacy, it resulted marriage and according to the petitioner as mentioned in the pleadings, they begot a child also. When such a plea has been raised, which involves the question of facts, the petition cannot be decided on the basis of mere documents. It needs factual proof, as per procedure and legal evidence. The contention raised by the parties cannot be gone into in this petition. The petition deserves to be dismissed. The parties are at liberty to work out their remedy in the pending proceedings.



9. With the above liberty this criminal original petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

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Sub Assistant Registrar(CS)

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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, Manapparai,
Tiruchirappalli District.

Crl.O.P.(MD).No.15380 of 2020
18.08.2021

dks(CO)

TR(01.09.2021) 4P 2C