



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)Nos.18125 & 18126 of 2021

WEB COPY

Thiruselvan

... Petitioner/ Petitioner /
Respondent in both petitions

Vs.

Kavitha

... Respondent/ Respondent /
Petitioner in both petitions

Common Prayer: Criminal Original petitions are filed under Section 482 of Cr.P.C, to call for the records to the order dated 05.10.2021 made in Crl.M.P.Nos.2242 and 2243 of 2021 in D.V.O.P.No.13 of 2016 on the file of the learned Judicial Magistrate No.III, Nagercoil and set aside the same by allowing these criminal original petitions.

(in both Crl.O.Ps.)

For Petitioner : Mr.P.Samuel Gunasingh

* * *

C O M M O N O R D E R

These criminal original petitions have been filed for setting aside the order dated 05.10.2021 passed by the learned Judicial Magistrate No.III, Nagercoil, dismissing Crl.M.P.Nos.2242 and 2243 of 2021 filed by the petitioner herein in D.V.C.No.13 of 2016 filed by the respondent herein.

2. The marriage between the petitioner and the respondent was held on 20.01.2011. The respondent herein gave birth to a male child on 28.09.2011. The marriage between the petitioner and the respondent was subsequently dissolved on 13.03.2019. Under the Protection of Women from Domestic Violence Act 2005, the respondent herein is seeking alimony for herself and her child in the said D.V.O.P. In the said proceedings, the petitioner herein filed Crl.M.P.Nos.2242 and 2243 of 2021 for reopening the evidence on his side and for adducing additional evidence. The petitioner wants to examine the Gynecologist who delivered the baby by attending to the respondent herein. The petitioner specifically alleges that when the marriage took place on 20.01.2011, it is impossible that the respondent herein could have given birth to a fully grown male child on 28.09.2011. In that connection, the petitioner wanted to examine the respondent's Gynecologist.



3. The Court below dismissed the said petition by holding that even collaterally, the issue of legitimacy of the child cannot be gone into.

4. I wanted to know, whether on the ground of suppression of material facts, the petitioner herein got the marriage nullified or dissolved. It appears that the marriage between the parties was dissolved only on the ground of cruelty.

5. The provisions of the Protection of Women from Domestic Violence Act 2005 can be invoked, by any person who was in a domestic relationship. The purpose for which the petitioner wants to examine the respondent's Gynecologist is wholly irrelevant for deciding the issue raised in D.V.O.P. I am more than satisfied that this aspect of the matter does not appear to have been established before the jurisdictional Family Court. The Court below had assigned sound reasons for dismissing Crl.M.P.Nos.2242 and 2243 of 2021 filed by the petitioner herein. No case for interference has been made out.

6. These criminal original petitions are dismissed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

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,
Nagercoil.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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TSK (CO)

GC (02.12.2021) 2P 3C

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