



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2021

CORAM :

THE HONOURABLE **Mrs. JUSTICE R. HEMALATHA**

Crl.O.P.(MD)No.13163 of 2018

and

Crl.M.P(MD).Nos.5910 and 5911 of 2018

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1.S.Gopalakrishnan
2.G.S.Siva Prasath
3.T.Anitha
4.G.S.Subhadra @ Kannu
5.G.S.Vatchala

... Petitioners

Vs.

E.Sathya

... Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in DVOP.No.4 of 2018 on the file of the Judicial Magistrate II, Nagercoil and quash the same as against the petitioners.

For Petitioners	: Mr.Balaji
	for M/s. Sharath Chandran
For Respondent	: Mr.K.Gokul

ORDER

The present petition has been filed under Section 482 of the Code of Criminal Procedure seeking to quash the proceedings in DVC.No.4 of 2018 on the file of the learned Judicial Magistrate II, Nagercoil.

2.In the decision in Crl.OP.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 had 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 226/227 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 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."

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3.Applying the same analogy, the present Criminal Original Petition is dismissed and if the petitioners are aggrieved by the orders passed by the learned Judicial Magistrate II, Nagercoil, 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 person. Consequently, connected Crl.M.P(MD).No.5910 of 2018 is closed.

4.The personal appearance of the petitioners is dispensed with. However, they should appear before the Magistrate, whenever their presence is required.

Sd/-

Assistant Registrar (crl)

// 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 MagistratebNoII,Nagercoil.

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

Crl.O.P. (MD)No.13163 of 2018
09.02.2021

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