



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2021

CORAM :

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CrI.OP.(MD)No.20044 of 2018 &
CrI.MP(MD)Nos.9220 and 9269 of 2018

Jeyalakshmi ... Petitioner/2nd Respondent
vs.

Jeyanthi ... Respondent/Petitioner

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in D.V.No.10 of 2017 on the file of the Judicial Magistrate No.II, Kuzhithalai and quash the same as against the petitioner.

Petitioner : Mr.D.Shanmugaraja Sethupathi

ORDER

The present petition has been filed under Section 482 of the Code of Criminal Procedure seeking to quash the proceedings in D.V.No.10 of 2017 on the file of the learned Judicial Magistrate No.II, Kuzhithalai.

2.The petitioner is the second respondent in D.V.No.10 of 2017 on the file of the learned Judicial Magistrate No.II, Kuzhithalai. The case of the petitioner is that even though the respondent harassed the present petitioner, she filed a case in D.V.No.10 of 2017 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against the petitioner without any basis. Her further contention is that the learned Judicial Magistrate No.II, Kuzhithalai should not have taken the case on file since, the allegations levelled by the respondent are vague.

3. In the decision in CrI.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."

4. In the instant case, if the petitioner is aggrieved by the orders passed by the learned Judicial Magistrate No.II, Kuzhithalai, she 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.

5. In view of the same, this petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sjj

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

The Judicial Magistrate No.II, Kuzhithalai.

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-5445[F] dated 16/02/2021)

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MJ(CO)

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