



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 22.02.2021

DATE ON WHICH PRONOUNCED : 19.03.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.10846 of 2017

and

Crl MP(MD)Nos.7411 & 7412 of 2017

1.M.Abdullah @ Mohamed Rafiq

2.M.Mohamed Jafar

3.Syed Ammal

4.A.Mohamed Sulthan

(Wrongly mentioned as Rahamathullah in DVOP Petition)

5.M.J.Mithar

(Wrongly mentioned as Sheik Mohamed in DVOP Petition)

... Petitioners/Respondents 1 to 5

Vs.

1.Sharmila Banu

2.Minor Selina Banu

... Respondents/Complainants

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to DVOP.No.31 of 2016, pending on the file of the learned Judicial Magistrate, Karaikudi, and quash the same.

For Petitioner : Mr.P.Kalaiyarasi Bharathi
For R1 : Mr.D.Paneerselvam
for Mr.S.M.S.Johny Basha

ORDER

This Criminal Original Petition has been filed to quash the proceedings in DVOP.No.31 of 2016, pending on the file of the learned Judicial Magistrate, Karaikudi.

2. Brief facts:-

The respondents filed a petition before the Trial Court in D.V.O.P.No.31 of 2016 under Sections 12, 17 to 20 and 22 seeking various reliefs on the ground that the marriage between the first respondent and the first petitioner was performed on 11.07.1999. Because of the marriage, the second respondent was born on 11.07.2006. The petitioner herein namely, the first petitioner was working in abroad and the respondents 1 & 2 are now living with the



first respondent's father in Karaikudi.

3. The second petitioner is the father, the third petitioner is the mother and the petitioners 4 and 5 are the brothers of the first petitioner. At the time of marriage, the first respondent was given 50 sovereigns of gold jewels and Rs.3 lakhs in cash along with other sridhana articles. From the date of marriage, the petitioners have harassed and tortured the first respondent to bring 25 sovereigns of gold jewels and a sum of Rs.2 lakhs for the purpose of sending the first petitioner to abroad. Whenever the first petitioner went abroad, he used to bring the first respondent to Karaikudi and leave her in her parental home. Even after that, the torture and cruelty continued.

4. On 26.11.2012, the first petitioner, at the instigation of the third petitioner, issued a notice. For which, a reply notice was also issued by the first respondent. The first respondent gave a petition to the Senjai-Al-Masithunnoor Jamad as well as Konnaiyur Jamad, complaining the ill-treatment of the petitioners, wherein, the first petitioner had agreed to arrange a separate residence for the first respondent. But, later, they refused and they kept the first respondent and her child in their house and committed cruelty. She was also not given proper care, food and maintenance. So, now, the respondents are living in the first respondent's parental home at Karaikudi.

5. On 02.10.2016, when the first respondent tried to go to the petitioner's house, was threatened. So, she filed a petition in M.C.No.22 of 2013 against the first petitioner, in which, the first petitioner did not appear. Again, on 30.06.2016, knowing that the first petitioner came to India from abroad, the respondents went to Konnaiyur. But, they were chased out. So, on the basis of these allegations, the respondents have sought for various reliefs, such as, residential right, not to encumber the house in Konnaiyur, not to remove the belongings of the respondent, return the jewels and cash along with the sridhana to the respondent and compensation amount of Rs.15 lakhs for spreading false defamative information that the first respondent is a person of mentally illness and maintenance amount of Rs.15,000/- per month.

6. To quash this petition, the respondents before the Trial Court have filed this petition mainly on the ground that the averments stated by the first respondent is not true and right of residence of the respondents are disputed etc.,

7. The matter was heard and reserved for judgment. In the mean time, the Co-ordinate Bench of this Court in a judgment reported in **Dr.P.Padmanaban and other Vs Monica and Another 2021 1 MLJ Cr1. 311** has passed a detailed order laying various directions regarding the procedure to be adopted by the Trial Court, while entertaining the



petition filed under Section 12 of Domestic Violence Act. As per this judgment, the petition filed under Section 12 of the Act, should be construed as civil proceedings, against which, the power under Section 482 Cr.P.C cannot be exercised. If at all only power under Article 227 alone, can be invoked and that too, on special and compelling circumstances. By passing various directions, the batch of petitions were dismissed by this Court. So, this Court by following the same and without going into the merits of the allegations levelled by each other, this petition is dismissed, with a direction to the Trial Court, to strictly, comply with the directions issued in the above said judgment and dispose of the matter on merits. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

dss

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,
KaraiKudi.

**Crl.O.P. (MD)No.10846 of 2017
and**

**Crl MP(MD)Nos.7411 & 7412 of 2017
19.3.2021**

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