



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 16.03.2021

DATE ON WHICH PRONOUNCED : 09.04.2021

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CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.13587 of 2017

and

Crl MP (MD)Nos.9131 & 9132 of 2017

M.Sethuraman

... Petitioner/Respondent

Vs.

Rajeswari

... Respondent/Complainant

Prayer:Criminal Original Petition is filed under Section 482 Criminal Procedure Code, to call for the records in connection with M.C.No.45 of 2014 on the file of learned Additional Mahila Court, Madurai and quash the same.

For Petitioner : Mr.M.Siddharthan

For Respondent : Mr.M.Kannan

ORDER

This Criminal Original Petition has been filed to quash the proceedings in M.C.No.45 of 2014 on the file of learned Additional Mahila Court, Madurai.

2.The facts in brief;

The respondent herein is the complainant before the trial court, the application was filed under Section 12 of Protection of Women From Domestic Violence Act, 2005. She has filed this petition, on behalf of her daughter and son and on self also. The husband of the complainant was Soundararajan alias Selvaraj. He was the son of late Malayandi chettiar. He had two sons namely, the deceased husband of the complainant, the respondent before the trial court and the petitioner herein and three daughters. The complainant with her daughter and son with the husband were residing as a joint family in number 13, 5th Street extension, Gandhipuram, coimbatore. Malayandi chettiar purchased a number of properties and all those properties were enjoyed in common with all the members of the joint family. He died on 14.01.2004, leaving behind all the above said legal heirs. In order to usurp the property, the respondent forced the husband of the Complainant to execute a release deed, which was refused by the husband of the complainant. He died on 24.07.2008. At that time, the complainant and her husband and children were residing in a portion of a house, which was owned by Malayandi Chettiar.



3. After the death of Malayandi chettiar, all the legal heirs have equal share in the property, which was also available to the husband of the complainant. The respondent was successfully preventing the complainant from enjoying the property and as well as she was verbally abused. The respondent has also created a number of documents to deprive the complainant to enjoy the properties. So, the complainant issued a legal notice on 03.12.2010 which was also replied by the respondent with false averments. The second notice was also sent on 08.08.2011. So, the complainant filed a petition for claiming maintenance before the Family Court is also pending in M.C.No.85 of 2011.

4. In the circumstances, the petitioner has filed a petition under Section 12 of Protection of Women From Domestic Violence Act, 2005, claiming various reliefs, such as, protection order under Section 18, residence order under Section 19 and monetary relief under Section 20 etc.,

5. So, challenging the petition filed by the complainant, the respondent before the trial court has filed this petition seeking quashment of the petition mainly on the ground that the petition is not at all maintainable against the respondent, who is only a brother-in-law of the complainant and the property mentioned by the complainant is not the shared household.

6. Both sides heard.

7. When the petition came up for hearing, in view of the judgement of this court in the judgement reported in **Dr.P.Padmanaban and other Vs Monica and Another 2021 1 MLJ Cr1. 311**, this court was of the opinion that the matter must be dealt by the Trial court as power under section 482 of Criminal procedure code cannot be invoked against the petition filed under Section 12 of Protection of Women From Domestic Violence Act, 2005.

8. But, the learned counsel for the petitioner would Submit that this petition is not at all maintainable against this petitioner. Reason being that, he is only a brother-in-law of the Complainant and as per the order passed by the 4th Additional District and Sessions Judge, Madurai in C.A.No.78 of 2012, the Complaint is liable to be quashed and the grounds on which, this court has decided that power under Section 482 Cr.P.C cannot be invoked, in such cases, is not available to the facts and circumstances of this case and so, he contended that this petition has to be allowed at the instance of the petitioner.

9. It is the further contention, on the part of the petitioner that the property in respect of which, the protection order and residence order is requested was the self accorded property of



Malayandi chettiar, executed registered Will in favour of this petitioner and her sisters and so, neither the complainant nor her husband and children's are entitled to any share in the property and so, it will not come under the definition of shared household as defined under the Protection of Women From Domestic Violence Act, 2005.

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10. Moreover, the petition under Section 4 of Protection of Women From Domestic Violence Act, 2005, will lie, only against a husband or a father-in-law and not certainly against a brother-in-law. It is also contended that in view of the order passed in C.A.No.78 of 2012 when the interim prayer itself was rejected the main prayer will not lie.

11. The contention on the part of the complainant is that whatever may be the allegation, the dispute raised in the petition can be tried only by the Trial court as per the judgement of this court. So, this petition will not stand alone and no case has been made by the petitioner to depart from the settled law.

12. So, the question which arises for consideration is whether the order passed by this court in the above said batch of cases, will also apply to facts and circumstances of the case also. As rightly contended by the counsel for the respondent whatever may be, the contention that have been raised by this petitioner in the petition, they have to be considered only before the trial court. The property in respect of, which the reliefs are requested belongs to this petitioner and his sisters absolutely and whether it will come under the category of the shared household of this complainant are the matters which Trial court to consider during the trial proceedings. The trial court can take this objection for the purpose of decision and can arrive at the conclusion.

13. So, I am of the considered view that this petition does not stand alone to be considered by this court by exercising the jurisdiction under Section 482 of Cr.P.C.

14. So, this petition deserves dismissal and accordingly, the same is dismissed with a direction to the Trial court to dispose the petition, within the time as mandated in the judgment reported. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AE)

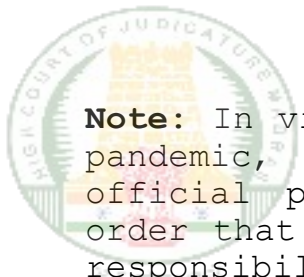
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Sub Assistant Registrar(CS)

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To

The Additional Mahila Court,
Madurai.

+1 CC to M/s.M.KANNAN, Advocate (SR-15898[F] dated
15/04/2021)

Crl.O.P. (MD) No.13587 of 2017
and
Crl MP (MD) Nos.9131 & 9132 of 2017
09.4.2021

ES (CO)
TR(19.05.2021) 4P 3C