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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2022

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

CrI.O.P.No.17031 of 2016

and

CrI.M.P.No.8171 of 2016

1.K. Vimal

2.K. Vijaya

... Petitioners

Vs.

K. Umaramani

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the D.V. Case namely M.C.No.2 of 2016 on the file of Judicial Magistrate cum District Munsif, Sriperumbudur Kancheepuram District and quash the proceedings.

For Petitioners : Mr. I. Javid Akbar

For Respondent : Mr. P. Manikannan

O R D E R

This petition is filed to call for the records pertaining to the D.V. case namely M.C.No.2/2016 on the file of Judicial Magistrate cum District Munsif, Sriperumbudur Kancheepuram District and quash the same.

2. It is seen from the complaint given by the respondent to the Protection Officer that the marriage between the respondent and first petitioner had taken place on 20.11.2009. Out of the marital relationship, a child by name V.Joshvaraj, was born on 02.11.2010. Respondent was provided with 13 sovereigns of gold jewels and other house hold articles at the time of her marriage. Within three months of marriage, petitioners started ill treating the respondent and she was insulted and humiliated in the presence of third parties. She was not allowed to talk with others and she was treated as unpaid servant. They started demanding a brand new car and substantial cash amount. Respondent came to know that first petitioner is notorious for stealing cars and he was remanded in one car theft case. Respondent was subjected to unbearable



cruelties, torture, physical and verbal abuses and force to go to her parents house. First petitioner filed a divorce petition in IDOP.No.4314/2013 and when the matter was pending, first petitioner kidnapped her son. Therefore, the complaint was given. The Protection Officer conducted enquiry and filed a Domestic Incident Report. On the basis of Domestic Incident Report, the case had been taken on file by the learned Judicial Magistrate Cum District Munsif, Sriperumbudur. Challenging the proceeding in M.C.No.2 of 2016, this petition is filed for quashment.

3. Learned counsel for the petitioners submitted that the marriage between the first petitioner and respondent had taken place on 20.11.2009. Thereafter, first petitioner filed divorce petition on the ground of cruelty and it is still pending. During the pendency of the proceedings, at the request of the respondent, first petitioner visited his son. When the first petitioner and respondent were travelling in the two wheeler, respondent stabbed him with a small knife on his neck and criminally intimidated him to kill. On the basis of the complaint given by the first petitioner, FIR in Crime No.910/2015 for the offences under Sections 324, 506(ii) IPC was registered against the respondent in Mangadu Police Station. When these divorce proceeding and criminal case are pending between the parties, it is highly impossible for the petitioners to commit domestic violence against the respondent. The domestic violence complaint was given only in 2016 as an after thought and as the counter blast to the divorce proceedings in the criminal case initiated by the first petitioner. Thus, the learned counsel for the petitioner prays for quashing the proceedings.

4. In response, the learned counsel for the respondent submitted that the divorce proceeding in IDOP No.4313 of 2013 was dismissed for default. Though, the divorce proceeding was filed, first petitioner and respondent were living again together. The criminal case given by the first petitioner against respondent is a false complaint. Only after conducting proper enquiry, Domestic Incident Report was given. There are merits in the application for seeking relief under the Domestic Violence Act, 2005. Thus, he prayed for dismissal of this petition.

5. Considered the rival submission.

6. As stated above, it appears that both the matrimonial and criminal proceedings are pending between the parties. When the matrimonial proceeding was pending, it appears that first petitioner and respondent met one day and it is alleged that respondent caused injury to the petitioner with



a knife. There are rival contentions and allegations are made against each other. This Court sitting and dealing the petition under Section 482 of Cr.P.C., cannot go into the truth or falsity of the allegations and counter allegations made against each other. It is for the trial Court to record evidence and inform the decision.

7. In view of the Domestic Incident Report making out a prima facie materials to proceed against the first petitioner, this Court is not inclined to entertain this petition against the first petitioner. However, the Domestic Incident Report shows that nothing is said against the second petitioner. Therefore, the proceeding against the second petitioner is quashed. Therefore, this petition is allowed insofar as second petitioner is concerned. As regards the first petitioner, the learned Judicial Magistrate cum District Munsif, Sriperumbudur, Kanchipuram District is directed to dispose this case as expeditiously as possible, preferably within a period of three months from the date of receipt of copy of this order. The personal appearance of the first petitioner may not to be insisted on each and every hearing. Only when the Court requires his presence is absolutely necessary, personal appearance of the first petitioner will be insisted upon. The first petitioner is directed to ensure that his counsel appears for all the hearing especially when he is not appearing before the Court to prosecute the case without any hitch. Accordingly, this petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate cum District Munsif, Sriperumbudur,
Kancheepuram District.

2.Do Through The Chief Judicial Magistrate,
Kancheepuram.

+2cc to M/s.J.Kanikkai Natham, Advocate, S.R.No.29581

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AK-II (CO)
SB(23/06/2022)