



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.04.2022

CORAM

WEB COPY

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

CRL.O.P.No.26402 of 2016
and Crl.M.P.No.13173 of 2016

1.Pappa Subramanian

2.Revathi

3.Priya

4.Veeramani

...Petitioners

Vs.

Santhi Gunamani

...Respondent

Prayer :- Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to call for the records and to quash the proceedings in D.V.C.No.1 of 2016 on the file of the learned Judicial Magistrate No.1, Myladuthurai.

For Petitioners: M/s.B.Ramamoorthy

For Respondent : Mr.R.Shivakumar for

M/s.K.M.Vijayan Associates.

ORDER

This petition is filed to call for the records in D.V.C.No.1 of 2016 on the file of the learned Judicial Magistrate No.1, Myladuthurai and quash the same.

2.Respondent filed application against the petitioners under Protection of Women from Domestic Violence Act, 2005, alleging that the first petitioner while he was the Member of Legislative Assembly in 1985, promised to get employment to respondent and then had forcible sexual intercourse with her. Thereafter, he continued to have sexual relationship with respondent. In 1986, first petitioner took the respondent to Velankanni and married her. Due to the intimate relationship between the two. Respondent got conceived in 1989 and that was aborted at the instance of first petitioner. Fourth petitioner threatened respondent through phone to leave the first petitioner, else she would be done to death. All the petitioners joined together and threatened the respondent. A complaint was given in All Women Police Station, Mayiladuthurai, in 2003. During the enquiry, first petitioner



agreed to live with the respondent and he purchased a vacant plot to the respondent. Respondent constructed house in that vacant plot. Petitioners 2 to 4 are now threatening the respondent to vacate the house. First petitioner continued to have sexual relationship with the respondent. When he had not visited respondent for long time, respondent visited the house of the first petitioner. She was prevented from entering the house and was physically harassed, beaten, abused in filthy language. First petitioner threatened to kill the respondent. Therefore, the application.

3.Learned counsel for the petitioners submitted there is no domestic relationship between the first petitioner and respondent. In fact, first petitioner had given a complaint dated 25.03.2003 against the respondent for the reason that respondent compelling him to marry her. There was also a release deed executed by respondent on 07.04.2003, wherein, she agreed not to interfere with the life of the first petitioner. After all these years, the complaint under the Protection of Women from Domestic Violence Act, 2005, was given on 15.03.2016 only with a view to harass the petitioners. Therefore, he prayed for quashing the proceedings in D.V.C.No.1 of 2016 on the file of the learned Judicial Magistrate No.1, Myladuthurai.

4.In response, learned counsel for the respondent submitted that the marriage between first petitioner and respondent had taken place on 14.02.1986. After the marriage, first petitioner and respondent had been living as husband and wife. During their marital life, respondent was harassed physically, verbally and emotionally. Therefore, the complaint under Protection of Women from Domestic Violence Act, 2005 was given. In this regard, he pressed into service judgment passed by the Hon'ble Supreme Court in Crl.A.No.627 of 2022 Kamatchi Vs. Lakshmi Narayanan, for the proposition that, for scope of notice under Section 12 of the Protection of Women from Domestic Violence Act, 2005, is to call for a response from the respondent in terms of the Statute so that after considering rival submissions, appropriate order can be issued. Therefore, petition filed for quashing cannot be entertained.

5.In reply, learned counsel for the petitioners submitted ruling reported in 2010 (6) CTC 216 D.Velusami Vs. D.Patchiammal, for the proposition that a woman maintained by man to satisfy his carnal desires would not come within phrase "relationship in nature of marriage".

6.Considered the rival submissions and perused the records.

7.From the facts set out, it is clear that there is a fundamental dispute and difference of opinion with regard to the alleged marriage that had taken place between the first



petitioner and the respondent. Learned counsel for the petitioners claims that there was no marriage between the first petitioner and respondent and there is no domestic relationship between them. On the other hand, submission of the learned counsel for the respondent is that first petitioner and respondent had been married and living as husband and wife. During the course of the marital life, respondent was subjected to domestic violence. Both the parties produced documents in support of their claim that there was a marriage and no marriage. In view of the dispute with regard to the alleged marriage between the first petitioner and respondent, production of documents in support of their claim, this Court is of the considered view that the disputed facts cannot be gone into in the petition filed under Section 482 of Cr.P.C. This Court in the judgment reported in 2021 1 L.W. 289 P.Pathmanathan and others Vs. V.Monica and Others held that petition under Section 482 Cr.P.C. cannot be maintained for quashing the proceedings under Domestic Violence Act, 2005.

8.Following order reported in 2021 1 L.W. 289 P.Pathmanathan and others Vs. V.Monica and Others, this Court finds that Criminal Original Petition in CRL.O.P.No.26402 of 2016 is not maintainable and dismissed accordingly. The learned Judicial Magistrate No.1, Myladuthurai is directed to follow the direction given in paragraph No.52 of the order reported in 2021 1 L.W. 289 P.Pathmanathan and others Vs. V.Monica and Others, while disposing the application. Consequently, connected miscellaneous petition stands closed.

9.The learned Judicial Magistrate No.1, Myladuthurai is directed to dispose the case at the earliest.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.1,
Myladuthurai.

2.Do through the Chief Judicial Magistrate,Nagapattinam.
+1 cc to Mr.K.M.Vijayan Associates, Advocate Sr.NO. 26105

CRL.O.P.No.26402 of 2016
and Crl.M.P.No.13173 of 2016

pm(CO)
A.SK(29/04/2022)