



C.R.P (PD).No.1002 of 2022 and
C.M.P.No.5196 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	30.06.2022
Pronounced on	08.07.2022

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

C.R.P (PD).No.1002 of 2022 and
C.M.P.No.5196 of 2022

P.Krishnappa ... Petitioner

Vs.

Padmavathy ... Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records pertaining to the case in DV.No.5 of 2014 on the file of the District Munsif-cum-Judicial Magistrate No.I, Hosur, struck off the same.

For Petitioner : Mr.R.Selvakumar

For Respondent : Mr.K.Thiruvengadam

ORDER

This Civil Revision Petition has been filed to struck off the proceedings pending before the learned District Munsif cum Judicial Magistrate-No.I, Hosur, pertaining to the case of in domestic violence in



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DV.No.5/2014.

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2. Heard the submission made by the learned counsel for the petitioner and the perused the materials available on record.

3. The Revision Petitioner is the husband. Against him, the respondent /wife has preferred a domestic violence complaint and the same was taken on file and pending before the learned District Munsif-cum-Judicial Magistrate-No.I, Hosur.

4. Now this petitioner has filed this Revision petition by claiming that the Domestic Violence Petition is barred by limitation, since the complaint has been given beyond a period of one year from the alleged date of the occurrence. It is further submitted that the petitioner and the respondent got separated and they were living separately for nearly 6 years before lodging the complaint; but the cognizance of the complaint was taken on 06.12.2014 and hence it is barred by limitation; since no enquiry or trial has been initiated in the domestic violence complaint and the complaint has been filed only to harass the revision petitioner and the same should be struck off.



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5. On perusal of the complaint, it is seen that there are several allegations were made against the husband. Some of the allegations are categorized under verbal and emotional abuse, economical violence, dowry related harassment and other kinds of emotional violences in the complaint. Since the respondent/wife has alleged that she was driven out of the matrimonial home and she was not supported with any maintenance, the reliefs sought for in the domestic violence complaint are protection order, residential order, orders for maintenance and compensation.

6. The Act of 'Domestic Violence' is defined under Sec.3 of the Domestic Violence Act and it reads as under:

***“Section 3 in The Protection of Women from Domestic Violence
Act, 2005***

3. Definition of domestic violence.—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any



unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. Explanation I.—For the purposes of this section,—

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) “verbal and emotional abuse” includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) “economic abuse” includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest



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or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household. Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.”

The above provision has in its ambit all the acts of physical abuse, sexual abuse and verbal and emotional abuse and economical abuse.

7. In the case in hand, the respondent/wife has alleged physical abuse, verbal and emotional abuse and economical abuse. It is alleged that the petitioner/husband has got illegal intimacy with other women and more particularly, his own brother's wife and deserted the respondent by badly abusing her and sending away from the matrimonial home. It is not the case of the revision petitioner that the wife is still residing in the matrimonial home and she is being maintained by him despite they have misunderstanding.

8. As per the submission of the revision petitioner /husband, they got separated before six years. The very allegation of the respondent is that she



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was sent out from the matrimonial home by the petitioner and he declared that he would not support the respondent and her children. From the above allegations, it is to be seen whether the period of limitation of one year would apply. In fact the Protection of Woman from Domestic Violence Act 2005 does not contemplate any limitation. However the learned counsel for the petitioner made reference to Sec.31 of the Domestic Violence Act which prescribes the maximum punishment of one year for violating the orders and hence it has to be read with Sec.468 of Cr.P.C and the limitation should be presumed as one year.

9. Sec.31 of the Domestic Violence act speaks about the punishment for breach of the protection order or any other order issued under the Act. Since the maximum punishment for violation is one year imprisonment, cue should be taken from Sec.468 of Cr.PC and it can only be construed that limitation for filing any complaint for violating the orders passed under the Act is one year. For a better understanding the provisions of Sec.31 of the Domestic Violence Act and Sec.468 of Cr.Pc. are extracted as under:

“Section 31 in The Protection of Women from Domestic



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Violence Act, 2005

31. Penalty for breach of protection order by respondent.—

(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrates may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.”

“Section 468 in The Code Of Criminal Procedure, 1973

468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only

1. Provisions of this Chapter shall not apply to certain economic offences, see the Economic Offences (Inapplicability of Limitation) Act, 1974 (12 of 1974), s. 2 end Sch.

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;



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(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.

(3) ¹ For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.] ”

10. The attention of this Court is drawn to the recent judgement of the Hon'ble Supreme Court of India held in **CrI.A.NO.627/2022** in the case of **KAMATCHI vs LAKSHMI NARAYANAN**. In the said case the Hon'ble Supreme Court has held in paragraph no.15 of the said judgement as below:

“15. Let us now consider the applicability of these principles to cases under the Act. The provisions of the Act contemplate filing of an application under Section 12 to initiate the proceedings before the concerned Magistrate. After hearing both sides and after taking into account the material on record, the Magistrate may pass an appropriate order under Section 12 of the Act. It is only the breach of such order which constitutes an offence as is clear from Section 31 of the Act. Thus, if there be any offence committed in terms of the provisions of the Act, the limitation prescribed under Section 468 of the Code will apply from the date of commission of such offence. By the time an application is preferred under Section 12 of the Act, there is no offence 24 committed in terms of the provisions of the Act and as such there would never be a starting point for limitation from the date of application under Section 12 of the Act. Such a starting point for limitation would arise only and only after there is a breach of an order passed under Section 12 of the Act.”



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11. The above judgement would clarify that the relevancy of the time limit and that it can be presumed only for the offence of violating the orders passed under the Domestic violence Act. When the matter is pending for enquiry and no order is passed or violated there cannot be any starting point for limitation. The observation the Hon'ble Supreme Court under paragraphs 20 and 21 is also relevant to be quoted:

"20. It is thus clear that the High Court wrongly equated filing of an application under Section 12 of the Act to lodging of a complaint or initiation of prosecution. In our considered view, the High Court was in error 30 in observing that the application under Section 12 of the Act ought to have been filed within a period of one year of the alleged acts of domestic violence.

21. It is, however, true that as noted by the Protection Officer in his Domestic Inspection Report dated 2.08.2018, there appears to be a period of almost 10 years after 16.09.2008, when nothing was alleged by the appellant against the husband. But that is a matter which will certainly be considered by the Magistrate after response is received from the husband and the rival contentions are considered. That is an exercise which has to be undertaken by the Magistrate after considering all the factual aspects presented before him, including whether the allegations constitute a continuing wrong."



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12. In the direction given in the above judgement, it is observed that when a Domestic Violence is reported, the Magistrate has a duty to consider all the factual aspects including the facts whether the allegations constitute a continuing wrong. As already stated, the revision petitioner/husband has not taken the respondent/wife back to home. Neither had he made any arrangement for her residence elsewhere away from the matrimonial home. As long as the respondent/wife is prevented from residing in the matrimonial home without any financial support, it can be only inferred that the acts of emotional abuse and economical abuse are being continued. No doubt the continuing wrongs would conjoin continuing cause of action..

13. Even for the sake of argument, if it is presumed that for giving complaints under the Domestic Violence Act there is a limitation of one year, in case of continuing wrongs that will not be applicable. Since the learned trial Judge has rightly taken the case on record and the factual aspect of the domestic violence complaint is a subject for enquiry, there is no reason to struck off the same. As I find no factual or legal infirmity in taking cognizance of the impugned complaint by the learned District Munsif- cum-Judicial Magistrate No.1, Hosur, it does not warrant any interference.



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Thus, this Civil Revision Petition stands **dismissed**. No costs. Connected
miscellaneous petition is also closed.

Index: Yes/No
Speaking / Non Speaking Order
jrs

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To
1. The District Munsif- cum-Judicial Magistrate No.1,
Hosur.

2. The V.R.Section,
High Court of Madras.



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R.N.MANJULA, J

jrs

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