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C.R.P.No.1418 of 2022
C.M.P.No.7327 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.1418 of 2022

and

C.M.P.No.7327 of 2022

1.M.Arunkumar

2.M.Mohanraj

3.Dhandayuthapani

... Petitioners

Vs.

K.Sivasankari

... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India praying to strike off the complaint in DVC No.12 of 2021 on the file of the Ld.Judicial Magistrate, Paramathi by allowing this Civil Revision Petition.

For Petitioners : Mr.N.Manoharan

For Respondent : Mr.L.P.Shanmugasundaram



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ORDER

The complaint filed in DVC No.12 of 2021 by the respondent is sought to be quashed in the present Civil Revision Petition. The first petitioner is the husband of the respondent, second petitioner is the brother of the first petitioner and the third petitioner is paternal uncle of the petitioners 1 and 2.

2. The grievances of the petitioners are that the respondent filed a complaint in DVC No.12 of 2021 against the petitioners on certain personal motive without substantiating the allegations. Learned counsel appearing on behalf of the Civil Revision Petitioners during the course of arguments confined the relief sought for in the present Civil Revision Petition only in respect of petitioners 2 and 3. In the context of petitioners 2 and 3, it is contended that there is no specific allegation against them in the complaint filed by the respondent for domestic violence. The petitioners 2 and 3 have stated that they are no way connected with the family dispute between the first petitioner and the respondent. The 2nd petitioner is residing away from the residence of the 1st petitioner and the 3rd petitioner is absolutely not connected with the affairs of the family of the 1st petitioner and the



respondent. Being a paternal uncle, he never involved himself with the personal affairs of the 1st petitioner and the respondent. It is mainly contended that there is no specific allegation in the complaint against the petitioners 2 and 3. In the absence of any such complaint, the petitioners 2 and 3 may not be subjected to trial unnecessarily, which would cause mental agony to them, more so, the second petitioner is a young person working in the private sector. The trial will cause prejudice to his interest and for his future career.

3. The learned counsel appearing on behalf of the respondent objected the said contention by stating that at the instance of the petitioners 2 and 3, the 1st petitioner harassed the respondent and therefore, the respondent has chosen to file a complaint against all the three petitioners. Their involvement are to be established only during the course of trial by the respondent and thus the petition is to be rejected.

4. The learned counsel for the respondent reiterated that there are evidences to establish certain allegations against all the petitioners and thus, the Civil Revision Petition is not maintainable.



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5. The learned counsel for the respondent relied on the judgement of the Full Bench of this court in ***Crl.O.P.S.R.No. 31852 and etc., batch,*** which reads as follows:

“76. xiv. A petition under Article 227 of the Constitution may still be maintainable if it is shown that the proceedings before the Magistrate suffer from a patent lack of jurisdiction. The jurisdiction under Article 227 is one of superintendence and is visitorial in nature and will not be exercised unless there exists a clear jurisdictional error and that manifest or substantial injustice would be caused if the power is not exercised in favour of the petitioner, (see Abdul Razak v Mangesh Rajaram Wagel (2010) 2 SCC 432, Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v Tuticorin Educational Society (2019) 9 SCC 538). In normal circumstances, the power under Article 227 will not be exercised, as a measure of self-imposed restriction, in view of the corrective mechanism available to the aggrieved parties before the Magistrate, and then by way of an appeal under Section 29 of the Act.”

Relying on the above judgement, learned counsel for the petitioner is of the opinion that it is not maintainable under article 227 of the Constitution of India as the trial is to be decided by the Competent Court of law.



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6. In reply, the learned counsel appearing on behalf of the petitioners relied on the judgement of the Hon'ble Supreme Court of India in the case of ***Geeta Mehrotra and Another Vs. State of Uttar Pradesh and Another*** reported in [(2012) 10 SCC 741], wherein, the Apex Court made the following observations:

“20. Coming to the facts of this case, when the contents of the FIR are perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names which have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

21. It would be relevant at this stage to take note of an apt observation of this Court recorded in G.V. Rao v. L.H.V. Prasad [(2000) 3 SCC 693 : 2000 SCC (Cri) 733] wherein also in a matrimonial dispute, this Court had held that the



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High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that: (SCC p. 698, para 12)

“12. There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their ‘young’ days in chasing their ‘cases’ in different courts.”

The view taken by the Judges in that matter was that the courts would not encourage such disputes.

25. However, we deem it appropriate to add by way of



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caution that we may not be misunderstood so as to infer that even if there are allegations of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasise by highlighting is that, if the FIR as it stands does not disclose specific allegation against the accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant wife. It is the well-settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing, especially in cases of matrimonial disputes whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of overimplication by involving the entire family of the accused at the instance of the complainant, who is out to settle her



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scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.

27. The High Court in our considered opinion appears to have missed that assuming the trial court had territorial jurisdiction, it was still left to be decided whether it was a fit case to send the appellants for trial when the FIR failed to make out a prima facie case against them regarding the allegation of inflicting physical and mental torture to the complainant demanding dowry from the complainant. Since the High Court has failed to consider all these aspects, this Court as already stated hereinbefore, could have remitted the matter to the High Court to consider whether a case was made out against the appellants to proceed against them. But as the contents of the FIR do not disclose specific allegation against the brother and sister of the complainant's husband except casual reference of their names, it would not be just to direct them to go through protracted procedure by remanding for consideration of the matter all over again by the High Court and make the unmarried sister of the main accused and his elder brother to suffer the ordeal of a criminal case pending against them specially when the FIR does not disclose ingredients of offence under Sections 498-A/323/504/506 IPC and Sections 3/4 of the Dowry Prohibition Act.”



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7. Considering the principles laid down both by the Full Bench of this Court and the Hon'ble Supreme Court of India, this Court is of the considered view that there is no specific allegation against the petitioners 2 and 3. In the absence of any specific allegation, it will be a futile exercise and the petitioners 2 and 3 will be unnecessarily put to hardship. In the absence of any specific allegation in the complaint, the trial cannot go on in respect of the petitioners 2 and 3.

8. When there is no *prima facie* allegation against the petitioners 2 and 3, it is not desirable to allow the trial to go on against the petitioners 2 and 3. Perusal of the copy of the complaint reveals that the allegations are mainly against the first petitioner, who is none other than the husband of the respondent and there is no specific allegation against the petitioners 2 and 3 except certain general information in the complaint. If at all any clinching evidences are available with the respondent against the petitioners 2 and 3 during the course of trial, then it is for the respondent to initiate all appropriate action before the trial court.



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9. However, as of now, there is no specific allegation stated in the complaint filed by the respondent and therefore, the trial against the petitioners 2 and 3 is liable to be withdrawn. Accordingly, the petitioners 2 and 3 are directed to be deleted from the complaint registered in DVC. No.12 of 2021 on the file of the Judicial Magistrate Court, Paramathi, Namakkal District and the trial is directed to go on against the 1st petitioner alone as expeditiously as possible.

10. In the result, the Civil Revision Petition stands partly allowed. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

05.12.2022

Skr/Jeni
Index : Yes
Speaking order



To

The Judicial Magistrate,
Paramathi,
Namakkal.



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S.M.SUBRAMANIAM, J.

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