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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.R.P. (PD) No.2089 of 2022
and C.M.P. Nos.10752 & 10755 of 2022

1.Rammohan

2.Devagi

...

Petitioners

versus

1.Harika Raju

2.Prasad Rammohan

...

Respondents

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 25.02.2022 passed in C.M.P.No.16225 of 2021 in D.V.A.No.182 of 2019 on the file of the learned Judicial Magistrate, Special Court for Trial of Domestic Violence Act Cases, Coimbatore and delete/strike out the name of the revision petitioners.

For Petitioners

: Mr.M.Muruganantham
for Mr.T.Elumalai



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ORDER

This Civil Revision Petition has been preferred challenging the order of the learned Judicial Magistrate, Special Court for Trial of Domestic Violence Act Cases, Coimbatore, dated 25.02.2022 made in C.M.P.No.16225 of 2021 in D.V.A.No.182 of 2019.

2. The revision petitioners are the respondents 2 and 3 in the Domestic Violence Application. The first respondent-petitioner has filed a complaint against the revision petitioners and the second respondent for seeking certain reliefs under Section 12 of the Protection of Women from Domestic Violence Act, 2005. The second respondent is the husband of the first respondent and the revision petitioners are the parents of the second respondent. During the pendency of the said proceedings, a Miscellaneous Petition in C.M.P.No.16225 of 2021 has been preferred to pass an order to delete / strike out the names of the respondents 2 and 3 from array of the respondents in D.V.A.No.182 of 2019 and the said petition was dismissed. Aggrieved over that, the petitioners have filed the present Civil Revision Petition.



3. The learned counsel for the petitioners submitted that the learned Judicial Magistrate without exercising the powers conferred on him under Section 28 of Domestic Violence Act had dismissed the petition. The attention of this Court is also drawn to the judgment of this Court held in ***Dr.P.Pathmanathan vs. V.Monica*** reported in **2021 (2) CTC 57**. In the said case, the learned single Judge [*N.Anand Venkatesh, J.*] has rendered as under;

“52.While it is no doubt true that the Court of Magistrate is invested with a great deal of flexibility under Section 28(2) of the Act to devise its own procedure for disposal of an Application under Section 12 of the Act, the twin principles of consistency and clarity dictate that this Court must now lay down some broad Guidelines, in exercise of its power of Superintendence under Article 227 of the Constitution and in respect of Judicial Magistrates under Section 483 of the Cr.P.C., for the proper disposal of Applications under Section 12 of the D.V Act. A corrective mechanism is available in the D.V Act itself for aggrieved parties to agitate their grievances and obtain redress. The following directions are, therefore, issued:

(i) An application under Section 12 of the D.V. Act, is not a Complaint under Section 2(d) of the Cr.P.C. Consequently, the procedure set out in Sections 190(1)(a) & 200 to 204, Cr.P.C as regards cases instituted on a Complaint has no application to a proceeding under the D.V Act. The



Magistrate cannot, therefore, treat an Application under the D.V Act as though it is a Complaint case under the Cr.P.C.;

(ii) An Application under Section 12 of the Act shall be as set out in Form II of the D.V Rules, 2006, or as nearly as possible thereto. In case interim ex parte Orders are sought for by the aggrieved person under Section 23(2) of the Act, an affidavit, as contemplated under Form III, shall be sworn to;

(iii) The Magistrate shall not issue a Summon under Section 61, Cr.P.C., to a Respondent(s) in a proceeding under Chapter IV of the D.V Act. Instead, the Magistrate shall issue a Notice for appearance, which shall be as set out in Form VII appended to the D.V Rules, 2006. Service of such notice shall be in the manner prescribed under Section 13 of the Act and Rule 12(2) of the D.V.Rules, and shall be accompanied by a copy of the Petition and affidavit, if any;

*(iv) Personal appearance of the Respondent(s) shall not be ordinarily insisted upon, if the parties are effectively represented through a Counsel. Form VII of the D.V.Rules,2006, makes it clear that the parties can appear before the Magistrate either in person or through a duly authorized Counsel. In all cases, the personal appearance of relatives and other Third parties to the domestic relationship shall be insisted only upon compelling reasons being shown. (See **Siladitya Basak v. State of West Bengal**, 2009 SCC Online Cal. 1903);*

(v) If the Respondent(s) does not appear either in person or through a Counsel in answer to a notice under Section 13, the Magistrate may proceed to determine the Application ex parte;

(vi) It is not mandatory for the Magistrate to issue notices to all parties arrayed as Respondents in an Application under Section 12 of the Act. As pointed out by this Court in Vijaya Baskar (cited supra), there should be



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some application of mind on the part of the Magistrate in deciding the Respondents upon whom notices should be issued. In all cases involving relatives and other third parties to the Matrimonial relationship, the Magistrate must set out reasons that have impelled them to issue Notice to such parties. To a large extent, this would curtail the pernicious practice of roping in all and sundry into the proceedings before the Magistrate;

(vii) As there is no issuance of Process as contemplated under Section 204, Cr.P.C. in a proceeding under the D.V Act, the principle laid down in **Adalat Prasad v. Rooplal Jindal**, 2004(4) CTC 608(SC) : 2004 (7) SCC 338, that a process, under Section 204, Cr.P.C., once issued cannot be reviewed or recalled, will not apply to a proceeding under the D.V Act. Consequently, it would be open to an aggrieved Respondent(s) to approach the Magistrate and raise the issue of maintainability and other preliminary issues. Issues like the existence of a shared household/domestic relationship, etc., which form the jurisdictional basis for entertaining an Application under Section 12, can be determined as a preliminary issue, in appropriate cases. Any person aggrieved by such an order may also take recourse to an Appeal under Section 29 of the D.V Act for effective redress (See **V.K Vijayalekshmi Amma v. Bindu V.**, 2010 (87) AIC 367). This would stem the deluge of Petitions challenging the maintainability of an Application under Section 12 of the D.V. Act, at the threshold before this Court under Article 227 of the Constitution;

(viii) Similarly, any party aggrieved may also take recourse to Section 25 which expressly authorises the Magistrate to alter, modify or revoke any order under the Act upon showing change of circumstances;

(ix) In **Kunapareddy** (cited supra), the Honble Supreme Court upheld the order of a Magistrate purportedly exercising powers under Order 6, Rule



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17 of the Code of Civil Procedure, 1908 (hereinafter referred to as “C.P.C.”), to permit the amendment of an Application under Section 12 of the D.V. Act. Taking a cue therefrom, it would be open to any of the Respondent(s), at any stage of the proceeding, to apply to the Magistrate to have their names deleted from the array of Respondents if they have been improperly joined as parties. For this purpose, the Magistrate can draw sustenance from the power under Order 1 Rule 10(2) of the C.P.C. A judicious use of this power would ensure that the proceedings under the D.V. Act do not generate into a weapon of harassment and would prevent the process of Court from being abused by joining all and sundry as parties to the lis;

(x) The Magistrates must take note that the practice of mechanically issuing Notices to the Respondents named in the application has been deprecated by this Court nearly a decade ago in **Vijaya Baskar** (cited supra). Precedents are meant to be followed and not forgotten, and the Magistrates would, therefore, do well to examine the Applications at the threshold and confine the Inquiry only to those persons, whose presence before it is proper and necessary for the grant of reliefs under Chapter IV of the D.V. Act;

(xi) In **Satish Chandra Ahuja** (cited supra), the Hon'ble Supreme Court has pointed out the importance of the enabling provisions under Section 26 of the D.V. Act to avoid multiplicity of proceedings. Hence, the reliefs under Chapter IV of the D.V. can also be claimed in a pending proceeding before a Civil, Criminal or Family Court as a Counter-claim;

(xii) While recording evidence, the Magistrate may resort to chief-examination of the Witnesses to be furnished by Affidavit (See **Lakshman v. Sangeetha**, 2009 3 MWN (Cr.)257). The Magistrate shall generally



follow the procedure set out in Section 254, Cr.P.C., while recording evidence;

(xiii) Section 28(2) of the Act is an enabling provision permitting the Magistrate to deviate from the procedure prescribed under Section 28(1), if the facts and circumstances of the case warrants such a course, keeping in mind that in the realm of procedure, everything is taken to be permitted unless prohibited (See **Muhammad Sulaiman Khan v Muhammad Yar Khan**, ILR 1888 (11) All 267); and

(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 visitatorial 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 Wagle**, 2010 (1) CTC 466 (SC) : 2010 2 SCC 432, **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society**, 2019 (5) CTC 696 (SC) : 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.”

4. In the observations of the above case, the learned single Judge has held that the proceedings under Domestic Violence Act is almost like civil proceedings and so the Magistrates can make use of their power to



invoke the provisions under Civil Procedure Code for passing relevant orders during the proceedings. By making reference to *Kunapareddy's* case, it is observed that the Magistrates can also follow the rationale of the above judgments in order to exercise powers under Order 6 Rule 17 C.P.C. for amending the petition filed under Section 12 of D.V.Act. It is further suggested that the Magistrates can also exercise powers under Order 1 Rule 10(2) C.P.C. in order to add or delete parties to the proceedings.

5. For a better understanding, the provision of Order 1 Rule 10(2) C.P.C. is extracted hereunder;

“The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

6. The above provision would empower the Court at any stage of the proceedings, with or without the application of either party to



pass appropriate orders if any party has been improperly joined as plaintiff or defendant to strike out or to implead the name of any person who ought to have been joined whether as plaintiff or defendant and in whose presence the matter can be effectually disposed of. The learned counsel for the petitioners cited the above judgment and insisted that the Magistrates ought to have made use of the power conferred under Order 1 Rule 10(2) C.P.C. in order to strike out the names of the parents of the second respondent.

7. In civil proceedings, a person who files the suit or original application is the *dominus litis* and it is at the discretion of the plaintiff / petitioner to choose the parties whom he considers necessary for the proceedings. In the course of proceedings, if it is proved before the Court that the parties have been improperly joined, for example, the party who has the opposite interest got impleaded as a plaintiff the Courts are at liberty to transpose the parties and pass necessary orders on merits. But here is a case where the complainant has chosen to implead the respondents as necessary parties to the complaint after taking cognizance of the matter. If the respondents are aggrieved and thought it fit that the Magistrate has taken cognizance of the complaint against one or some of the respondents, the



cognizance so made can only be challenged before the appropriate forum.

By deleting the persons from array of parties *suo motu* by the Court after having taken the cognizance of the complaint against them would amount to sitting on appeal over its own orders.

8. After the complaint if any another petition is filed to implead some other persons as parties to the proceedings and at that stage it is open to the Magistrate to decide for the first time whether the proposed parties are necessary parties or whether the petition to implead them has been filed just to harass all the family members of her husband.

9. In the instant case, the complainant has chosen to implead the respondents also as parties to the complaint by making certain allegations against them and the complaint has also been taken on file. Hence, the action of the Magistrate in taking cognizance of the complaint as against the respondents can only be challenged in accordance with law and not otherwise. Hence, I do not find any ground for interference.



10. Accordingly, this Civil Revision Petition is dismissed and the order dated 25.02.2022 passed by the learned Judicial Magistrate, Special Court for Trial of Domestic Violence Act Cases, Coimbatore in C.M.P.No.16225 of 2021 in D.V.A.No.182 of 2019 is hereby confirmed. Consequently, connected Miscellaneous Petitions are closed. However, there is no order as to costs.

08.07.2022

Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

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To

The Judicial Magistrate,
Special Court for Trial of Domestic Violence Act Cases,
Coimbatore.



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R.N.MANJULA, J.

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