



CRP(PD)(MD)No.951 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(PD)(MD)No.951 of 2021
and
C.M.P(MD).No.5369 of 2021

R.Muruganatham : Petitioner/Respondent

Vs.

M.Kalpana : Respondent/Petitioner

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to strike off the Domestic Violence Application/Petition filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 in D.V.O.P.No.03 of 2021 on the file of the Judicial Magistrate Court, Oddanchatram, Dindigul District.

For Petitioner : Mr.J.Pandi Dorai

For Respondent : Mr.M.Jegadeeshapandian



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ORDER

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The petitioner is the respondent in the DVOP proceedings initiated by the respondent/wife under Section 12 of the Protection of Women from Domestic Violence Act (hereinafter referred to as 'DV Act') and he has filed this revision petition under Article 227 of the Constitution of India challenging the said proceedings in D.V.O.P.No.3 of 2021 pending on the file of the learned Judicial Magistrate, Oddanchathiram, Dindigul District.

2. The Hon'ble Full Bench of this Court, in the reference made in CrI.O.P.SR.Nos.31852 of 2022, etc. (batch), dated 17.11.2022, has answered as follows:

“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



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caused if the power is not exercised in favour of the petitioner. (See Abdul Razak v Mangesh Rajaram Wagle (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.”

3. The Hon'ble Full Bench of this Court has also held that the personal appearance of the parties shall not be insisted upon, if the parties are effectively represented through a counsel. The relevant portion is extracted as under:

“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



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Supreme Court in ***Kunapareddy v. Kunapareddy Swarna Kumari***, reported in (2016) 11 SCC 774.

(ii) If the petitioner is represented through a counsel, the learned Magistrate shall not insist on the personal appearance of the petitioner. However, the petitioner shall appear before the Court as and when his presence is required by the Court.

(iii) The learned Magistrate is directed to dispose of D.V.O.P.No.3 of 2021 as expeditiously as possible preferably within a period of five months from the date of receipt of a copy of this order.

5. Accordingly, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

06.12.2022

Index : Yes / No

Internet : Yes / No

Rmk

To

The Judicial Magistrate Court,
Oddanchatram, Dindigul District.



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B.PUGALENDHI, J.

Rmk

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