



CRP(MD)No.1991 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.12.2022

CORAM:

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

CRP(MD)No.1991 of 2021
and C.M.P(MD).Nos.10685 and 10687 of 2021
C.M.P(MD).No.6377 of 2022

1.N.T.R.Vijayakumar
2.R.Chellammal
3.R.Rajaram Mohan : Petitioners/Respondents 1 to 3

Vs.,

1.S.R.Sharmili
2.V.Sahana : Respondents/Petitioners

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to quash the impugned petition made in DVOP.No.38 of 2021 on the file of the learned Judicial Magistrate Court No.1, Kuzhithurai, Kanniyakumari District.

For Petitioners : M/s.N.Marimuthu
Mr.V.M.Jegadeesh Pandian
For Respondent : Mr.M.R.Sreenivasan (for R1)
No appearance (for R2)



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ORDER

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The petitioners are the respondents in the DVOP proceedings initiated by the first respondent/wife under Section 12 of the Protection of Women from Domestic Violence Act (hereinafter referred to as 'DV Act') and they have filed this revision petition under Article 227 of the Constitution of India challenging the said proceedings in D.V.O.P.38 of 2021 pending on the file of the learned Judicial Magistrate Court No.1, Kuzhithurai, Kanniyakumari District.

2. The Hon'ble Full Bench of this Court, in the reference made in Crl.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



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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) 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



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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).”

4. The relief sought for is civil in nature and the notice issued under Section 13 of the DV Act is not a summon under Section 61 of the Code of Criminal Procedure. The learned Magistrate in a proceeding initiated under the DV Act is not conducting a trial, but an enquiry. Therefore, this Civil Revision Petition is not maintainable before this Court, as per the decision rendered by the Hon'ble Full Bench (cited supra). However, this Court is inclined to dispose of the Civil Revision Petition in the following terms:

(i) If the petitioners are having any grievance that they have been unnecessarily added as parties to the proceedings, it is open to them to file an application before the learned Magistrate to delete their names and if any such application is filed, the learned Magistrate shall



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decide the same, as per the decision of the Hon'ble Supreme Court in ***Kunapareddy v. Kunapareddy Swarna Kumari***, reported in ***(2016) 11 SCC 774***.

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

(iii) The learned Magistrate is directed to dispose of D.V.O.P.No.38 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 petitions are closed.

02.12.2022

Index : Yes / No

Internet : Yes / No

Rmk

To

The Judicial Magistrate No.1, Kuzhithurai,
Kanniyakumari District.



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B.PUGALENDHI, J.

Rmk

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