



CRP(MD)No.2517 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(MD)No.2517 of 2022

and

CMP(MD)Nos.12365 and 12367 of 2022

1. Dr.V.Baskaran

2. Mayillammal

... Petitioners

versus

1. B.Sandhya

2. Minor B.Nithin

3. Minor Tharanidharan

(Minor Respondents 2 and 3
are represented through their
mother 1st respondent)

... Respondents

Civil Revision Petition filed under Article 227 of Constitution of India, to strike off the petition filed under Section 12 of the Protection of Women from Domestic Violence Act, 2002, in D.V.No.18 of 2022 on the file of the Judicial Magistrate Court, Uthamapalayam.

For Petitioners : Mr.G.Vishnuram



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ORDER

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This Civil Revision Petition is filed as against the proceedings initiated by the first respondent herein in D.V.No.18 of 2022 before the the Judicial Magistrate Court, Uthamapalayam. The petitioners herein are the husband and mother-in-law of the first respondent.

2. The learned counsel appearing for the petitioners submits that the marriage solemnized between the first petitioner/husband and the first respondent/wife was dissolved by granting a decree of divorce dated 20.10.2022 by the Subordinate Court, Uthamapalayam and therefore, the petition filed by the first respondent under Section 12 of the Protection of Women from Domestic Violence Act, 2002, in D.V.No.18 of 2022 is abuse of process of law and as there is no domestic relationship between the first petitioner and the first respondent, it has to be struck off.



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3. Though the petitioners claim that the marriage solemnized between the first petitioner/husband and the first respondent/wife was dissolved by the Court of law by granting a decree of divorce dated 20.10.2022, the petition in D.V.No.18 of 2022 appears to have been filed before the grant of divorce.

4. Further, the Hon'ble Apex Court in ***Re Juveria Abdul Majid Patni vs. Atif Iqbal Mansoor***, reported in ***2014 10 SCC 736***, held as follows:

“31. An act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Domestic Violence Act, 2005, including monetary relief under Section 20, Child Custody under Section 21, Compensation under Section 22 and interim or ex parte order under Section 23 of the Domestic Violence Act, 2005.”



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5. In view of the decision cited supra, the contention raised by the learned counsel for the petitioners that the domestic violence proceedings cannot be continued after the decree of divorce, cannot be accepted.

6. Regarding the proceedings initiated under the Protection of Women from Domestic Violence Act, 2002, 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 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



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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.”

7. 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 appearance of relatives and other third parties to the domestic relationship shall be insisted only upon compelling reasons being shown. (See Siladitya Basak v.



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State of West Bengal (2009 SCC OnLine Cal 1903).”

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8. Since this Civil Revision Petition is filed challenging the notice issued under Section 13 of the Protection of Women from Domestic Violence Act and not filed on the ground of lack of jurisdiction, this Civil Revision Petition is not maintainable before this Court, as per the decision rendered by the Hon'ble Full Bench (cited *supra*).

9. 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 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.



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(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.No.18 of 2022 as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order.

10. Accordingly, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

15.12.2022

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To

1. The Judicial Magistrate Court,
Uthamapalayam.



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B.PUGALENDHI, J.

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