



C.R.P.No.1655 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 21.02.2023	Delivered on 24.07.2023
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CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.1655 of 2021

and

C.M.P.No.12813 of 2021

Krishna Chaitanya

..Petitioner

Vs.

1.Srikala

2.V.Naga Suseela

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to strike off the entire proceedings initiated under Sections 12, 18, 20, 22 of the Protection of Women from Domestic Violence Act, 2005 in D.V.C.No.50 of 2018 on the file of the Additional Mahila Court, Metropolitan Magistrate at Allikulam, Chennai.

For Petitioner : Ms.J.Amritha Sarayoo

for M/s.TVJ Associates

For Respondents : Mr.K.V.Muthu Visakan for R1

R2-Given up



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ORDER

This Civil Revision Petition has been filed seeking to strike off the proceedings initiated under Sections 12, 18, 20 & 22 of the Protection of Women from Domestic Violence Act, 2005 in D.V.C.No.50 of 2018 on the file of the Additional Mahila Court, Metropolitan Magistrate at Allikulam, Chennai.

2.The case of the 1st respondent as averred in the DVC proceedings as follows:-

The 1st respondent is the legally wedded wife of the petitioner and their marriage was performed on 20.03.2011, as per Hindu rites and customs and the same was registered as Certificate No.102, Marriage 170/HM/2011 at the Office of the Registrar of hindu Marriages, Malkajgiri, RR District on 23.03.2011. After two weeks of their marriage, the petitioner proceeded to Italy on account of his job. During his stay in India, he had instructed the 1st respondent / wife to quit the job, which she was working at Chennai and asked her to stay with his parents till she proceeds to Italy. Heeding to the words of the husband/petitioner, the 1st respondent left the



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job and stayed with the parents of the petitioner. Soon after, the petitioner left to Italy, his parents started showing true colours and warned her that they will not let her to go to Italy, if she does not act accordingly to their instructions and commands. After a period of six months, the 1st respondent went to Milan, Italy. When the petitioner was in Italy, the 2nd respondent, who is the mother of the petitioner took over the custody of the important belongings such as gold, silver and pattu sarees of the petitioner.

3. When the 1st respondent was in Italy, she had to undergo lot of humiliation and harassment in the hands of the petitioner and he used to abuse and threaten her. Even during the stay in Italy, the petitioner never showed inclination towards the conjugal relationship with the petitioner and always used to search for reason so as to avoid the consummation of marriage. Instead he used to pick up quarrels and harass the 1st respondent in such a way that she herself used to get into depression. Hence, she has filed the present D.V.C proceedings before the Additional Mahila Court at Allikulam.



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4. On the other hand, the case of the petitioner is that, after marriage, petitioner and the 1st respondent lived in the residence of the 2nd respondent from 20.03.2011 to 04.04.2011, 15 days after the wedding the petitioner left to Italy on 05.04.2011 to resume his job. The 1st respondent went to her parental home on 08.04.2011 and resumed her job at Chennai. Thus, the petitioner and 1st respondent lived in his parent's house just for 14 days after marriage. Even in this 14 days, they had to leave to Chennai for marriage reception and temple visits. Thus, they never lived in a shared household in India after marriage.

5. Subsequently, when the 1st respondent joined the petitioner in Italy, her behaviour started changing slowly and she behaved hysteric at times. Her conversations were not normal and she would pick up quarrel for every single matter. The 1st respondent very often kept crying profusely without there being any reason. Most of the time, she was found in a melancholic mood for reasons best known to her. The 1st respondent developed suicidal thoughts and tried to harm and injure herself. During such times, the 1st respondent threw things at the petitioner with the aim to



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harm the petitioner. Suddenly, on 12th January, 2013, the 1st respondent turned very aggressive and bodily obstructed petitioner. With great difficulty, the petitioner barely managed to get out of the house unharmed. Since that day, the petitioner was forced to stay away from his home (apartment) fearing the 1st respondent's hostile behaviour.

6.The petitioner sought for a professional marriage counsellor's help and arranged for an appointment with the help of Provincia di Milano, Dott.SSaChezzi Luciana, and Dr.Giancarlo Rosati at the city Parma. The petitioner and the 1st respondent met them together on January 24th, 2013 at their Office in Parma. During the session, the 1st respondent even mentioned that she would divorce the petitioner and stay at Milan, Italy to pursue her Doctoral programme. Also during the session with counsellors, the 1st respondent exhibited signs of aggression and hysteria by hitting the petitioner. Noticing this behaviour, the counsellors suggested the petitioner not to stay with the 1st respondent under one roof. They suggested meeting her only in public spaces for lunches / dinners, which was followed duly by the petitioner. Unfortunately, due to 1st respondent's irrational reluctance to



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attend any more counselling sessions, it could not be continued. Thus, it was the 1st respondent who was making life difficult at Milan.

7.Later, the 1st respondent filed a case of harassment and abandonment against the petitioner at the Local Court in Milan, as a counter attack for the counselling. The case was found to be untrue and the case against the petitioner was cancelled. The 1st respondent never lived with the petitioner after 12.01.2013. Thus, the allegations made in the DV complaint have already been made against the petitioner in a Court in Italy and were closed accepting the defence of the petitioner. Four years after her case was disbelieved in Italy, the 1st respondent has come up with the impugned proceedings, with malafide intention of harassing the petitioner and his parents.

8.The petitioner also submitted that he had filed O.P.No.1474 of 2013 on the file of the Hon'ble Judge, Family Court, Ranga Reddy District, L.B.Nagar seeking dissolution of marriage. The 1st respondent failed to appear in the court for more than 2 years and eventually the matter was set



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exparte and an Exparte decree of divorce was granted on 20.04.2015. The same was set aside later, as the petitioner endorsed 'no objection' for restoration of the O.P. in order to facilitate and to solve the problem in amicable matter, by way of peaceful settlement through mutual negotiations, instead of going around the courts, the petitioner withdrew O.P.No.1474/2013. The copy of the memo filed as Annexure-3. The petitioner would submit that the 1st respondent had demanded for certain sum of money to sign the mutual consent divorce and also threatened that if the petitioner failed to pay the said sum, she would file petition under DV Act not only against the petitioner but also against his parents, which has now been materialized. The events narrated above would show that the invocation of provision of DV Act by the 1st respondent is malafide and is liable to be thrown out inlimine.

9.The Court below referred the matter for mediation. Mediation did not fructify as the 1st respondent kept changing the final settlement amount for granting divorce by mutual consent. Pending the proceedings the petitioner's father, unable to take the mental stress and agony had died.



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The petitioner, by borrowing, had spent huge amounts for hospital treatment. Thus, the Domestic Violence had its intended effect on the petitioner's father. The court below ought not to have entertained the petition, filed 7 years after the parties started living separately.

10.As regards the parents of the petitioner, the 1st respondent never cared to stay with them. Therefore, roping in petitioner's parents who are senior citizens with severe medical problems prima facie does not satisfy any of the ingredients of the sections and the impugned petition filed out of sheer vengeance, deserves outright quashing. Due to these vexatious aspersions and the case filed, the 3rd respondent suffered humiliation and died of cardiac arrest. The entire proceedings of the instant case is an abuse of process of law and continuation of the said proceedings will amount to miscarriage of justice and looked at from any angle the initiation of the impugned proceedings cannot be sustained and is liable to be rejected.

11. The respondent wife resisted the same and the learned counsel



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appearing for the respondent would submit that the same has been filed before the Court properly and the petitioner's parents has ill-treted her even after the petitioner coming to India and the same has to be looking into and Domestic Violence Act has to be proceeded against them. In normal circumstances, the power under Article 227 will not be exercised as a measure self-imposed restriction and the parties can proceed to the magistrate by way of an appeal under Section 29 of the Act and submitted the said proceedings has to be continued before the Court for rendering justice as she has been tortured by the petitioner's parents.

12.Heard Ms.Amritha Sarayoo, learned counsel appearing for the petitioner and Mr.K.V.Muthu Visakan, learned counsel for the 1st respondent.

13.On going through the pleading concerned, it is seen that the marriage of the petitioner and the 1st respondent were solemnized on 20.03.2013 at Secunderabad as per Hindu Rites and Customs and the petitioner was working as a Senior post doctorate in Italian Research



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Institute and after two weeks of their marriage, the petitioner proceeded to Italy to continue his job and later after a period of six months, the 1st respondent also went to Milan to pursue her Ph.D. Degree at Milan. The 1st respondent's case is that Domestic Violence has occurred to her during July 2011 at Secunderabad and February to August 2012 at Milan in Italy. She has also stated that her husband used to abuse, scold, make her feel low by shouting at her and correcting constantly on her behaviour in front of his friends during her stay at Milan, Italy and her in-laws would always complain about her talking, sleep timing and eating habits and always used to find fault in her and complain it to her parents and further the petitioner would restrict her to meet her friends and used to force her to leave the house in Milan and threatened her to leave the rented house and would force her to send the money to the in-laws account and also stated that her in laws have demanded more jewelry and land etc as dowry during engagement.

14.The 1st respondent submitted that she had to under go a lot of humiliation and harassment in the hands of the petitioner at Milan and also stated that the petitioner was not interested in conjugal life. Further, she



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stated that the petitioner willfully deserted her in Milan for a period of one month and whereas the petitioner would state that on 12.01.2013, the 1st respondent picked up a quarrel for reasons unknown and hit the petitioner in blue and black and abused him in foul language which was witnessed by the neighbors of the house. Later in the year 2013, the petitioner returned back to India and filed a Divorce Petition before the Family Court, Hyderabad. The 1st respondent has filed her counter affidavit in the year 2015 and on 11.07.2017, the petitioner herein filed a memo in the F.C.O.P and withdrew the same. Subsequently, in August 2017, the 1st respondent filed the present Domestic Violence case on the file of the Additional Mahila Court, Allikulam for the incidents that had occurred in Milan, Italy. Aggrieved by the same, the petitioner/husband has filed the present C.R.P to strike off the DVC case on the ground of Res Judicata and abuse of process of law. He also submitted that he has raised all these allegations in a complaint in Italy and the same was not accepted and a case filed in the Local Court of Milan was also closed and now she filed DVC proceedings, which is a second litigation.

15.The issue before this Court is whether the DVC Proceedings initiated by the 1st respondent is liable to be struck off. On perusal of the



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application made by the 1st respondent under Section 12 of the Domestic Violence Act, major allegations would relate to incidents that had occurred in Milan, Italy. The petitioner has also submitted a marriage counselor's report. The report would go to show that a meeting was held between the petitioner and the 1st respondent at the Marriage Counsellor Office at Metafora Di parma on 24.01.2013 and the translated version of the said report has been filed in the type set of report, which reads as follows:-

“After listening to the spouses individually and then together, we have come to the determination that the situation is indeed heavy. We separately heard his wife Srikala state in front of us and later in front of her husband that Mr.Krishna(spouse) never abused her and never hit her. For two days, Mr.Krishna lived away from home to avoid arguments with his wife. During the meeting, Mrs.Srikala asked her husband to return home that same evening, threateing him that if he didn't, she would go to India to file for divorce, and then return to Italy to finish her studies. Her husband Krishna, fearing that, once he returned home, his wife might have aggressive attitudes towards him, declared himself willing to return as long as a couple of mutual friends came to live with them for some time: the presence of the two



friends would prevented Srikala from adopting violent attitudes. When faced with her husband's conditions, Ms.Srikala physically attacked her husband and threw herself on the ground wriggling. We could hardly calm the lady down. After having carefully evaluated the situation, we advised the two spouses to remain separated for some time in order to have the necessary tranquility to re-evaluate the relationship. Based on what we have been able to hear and observe, we believe it is essential that Mrs.Srikala undergoes a medical psychiatric examination for a more precise assessment of the psychological disorder that emerged during the interview and which we believe is at the basis of the relational crisis.”

16.It is the case of the petitioner that after counseling session the 1st respondent has filed a complaint before the Milan Police for Domestic Violence and violation of family assistance and it is seen that the allegations against the petitioner in complaint before the Milan police and the present DVC proceedings are akin to each other. Though the 1st respondent has filed a complaint of Domestic Violence and family assistance, a case was registered before the local Court of Milan only for violation of family



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assistance, which would go to show that Domestic Violence never occurred to the 1st respondent. From the records produced by the petitioner, it is evident that the said case was also closed, since the 1st respondent never contested further. That being so, the 1st respondent/ wife has not stated any of the above facts in the present DVC proceedings which is a clear suppression of material facts. The Hon'ble Supreme Court time and again had held that person with unclean hands and person who suppresses the material facts with a motive to gain some advantage or benefit at the hands of the Court are not entitled for any relief from the Court.

17.The Hon'ble Supreme Court in **Vijay Syal & Another Vs. State of Punjab & Others** reported in (2003) 9 SCC 401 wherein, it observed as follows:-

“In order to sustain and maintain sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and / or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered



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as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentations and is concealing material facts it does so at its risk and cost. Such party must be ready to take consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters are either mistaken or lightly taken instead of learning proper lesson. Hence there is a compelling need to take serious in such matters to ensure expected purity and grace in the administration of justice.”

18.The Delhi High Court in **Anil Kumar Tian Vs. State (Government NCT of Delhi)** reported in 2022 LiveLaw (Del) 641 has observed that allowing fabricated allegations against the entire family in matrimonial disputes may lead to further misuse of process of law. The relevant portion of the said judgment reads as follows:-

“If false implication by fabricated omnibus allegations against entire family in the course of matrimonial disputes and differences, is allowed, it may lead to further misuse of process of law and assume serious proportions.”



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19.The Hon'ble Supreme Court in **Ral Talreja Vs. Kavita Talreja**

reported in **(2017) 14 SCC 194** wherein, the Court observed as follows:-

“Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. IN the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is an acquittal may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act 1955. However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse leveling false accusations against the other spouse would be an act of cruelty. In the present case, all the allegations were found to be false.”



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20.In **T.K.Srinivasan and Others Vs. The State and Others**

reported in **MANU/TN/1024/2018** wherein, while quashing a proceedings under Section 12 of the Domestic Violence Act, 2005 has held as follows:-

“Taking note of caution that power of quashing should be exercise very sparingly and with circumspection and that too in the rarest of rare cases, this Court considered that this is an illustrious case where the benevolent legislation intended to protect women in distress due to domestic violence has been misused and thereby it is clear that the criminal proceeding is manifestly attended with mala fide and the proceedings is maliciously instituted with an ulterior motive of wreaking vengeance on the respondents with a view to spite them due to private and personal grudge I hold that the proceedings pending in C.C.No.6578 of 2013, on the file of the X-Metropolitan Magistrate, Egmore, Chennai is nothing but abuse of process of law.”

21.The learned counsel appearing for the petitioner / husband submits that the said proceedings deserves to be quashed, on the ground that the Domestic Violence petition itself is not maintainable and not to be



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entertained. She further submitted that the entire complaint relates to a period between 2011 and 2012, when the parties got married in India and were living in Italy and the 1st respondent had already raised all these allegations in a complaint in Italy, which was considered and not agreed. The very same allegations, for the very same period have been raised now, suppressing the proceedings in Italy. She would submit that in view of the above the proceedings in the Court below is hit by principles of *res judicata* and also by Section.188 of Cr.P.C. She would further submit that allegations of the 1st respondent is that harassment, mental torture have not been accepted by the Local Court in Milan and none of the ingredients of the offence alleged to have been committed under Sections 18, 20 and 22 of D.V.Act has been made out. She would state that application under Section 12 of D.V.Act is false and the same deserved to be rejected.

22.The learned counsel appearing for the petitioner, in support of his submission, has referred a judgment of Full Bench of this Court in CrI.O.PSr.No.31852 of 2022 etc. Batch dated 17.11.2022 wherein, it observed as follows:-



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“32.We are, therefore, of the considered opinion that in a proceeding under Chapter IV of the D.V.Act, a Magistrate exercises civil jurisdiction to grant one or more civil reliefs under Sections 18-23 of that Act. Consequently, we affirm the view of N.Anand Venkatesh, J. In Pathmanathan, supra, that a Magistrate exercising jurisdiction under Section 12 of the D.V.Act, is not a Criminal Court for the purpose of Chapter IV of the said Act.”

23.He referred the judgment of the learned Single in Pathamanathan's case, which shall now govern the disposal of applications under the D.V.Act. The relevant portion reads as follows:-

“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 Section 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.”



24.It is seen that after the counseling session, the 1st respondent has filed a complaint before the Milan Police for Domestic Violence and Violation of family assistance. It is to be noted that the allegations stated in the complaint before the Milan police and the present DVC proceedings are akin. Though the 1st respondent has filed a complaint for Domestic Violence and Violation of family assistance, a case was registered before the Local Court of Milan only for violation of assistance, which would go to show that Domestic Violence never occurred to the 1st respondent.

25.From the records produced by the petitioner, it is evident that the said case was also closed, since the 1st respondent never contested. That being so, the 1st respondent / wife has not stated any of the above facts in the present DVC proceedings which is a clear suppression of material facts. She has returned to India after he left for Milan and they never lived together as husband & wife and there was no direct contact between each other. He filed divorce and later on it was on consent memo he withdrew the OP. She filed immediately DVC proceedings after withdrawal of OP and all the



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settlement talks for mutual consent of divorce was not materialised. The

Hon'ble Apex Court also time and again has been reiterating that person with unclean hands and person who suppresses the material facts with a motive to gain some advantage or benefit at the hands of the Court are not entitled for any relief from the Court.

26.From the above facts, it is clear that the 1st respondent has clearly resorted to abuse of process of law by using the legislations intended to protect the rights of women, to avenge the petitioner by initiating this proceedings. The 1st respondent has not approached the Magistrate with clean hands and complete facts. The 1st respondent has made bald and vague allegations against the petitioner, which do not only lack the substance but also gives no hint to the timeline of the occurrences. There are no specific instances, words or specific conduct is given in detail in the Application. The allegations are very general and omnibus in nature. Therefore, this Court is of the view, the proceedings are liable to quashed.

27.In view of the same, this Civil Revision Petition is allowed, the



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proceedings initiated under Section 12, 18, 20 & 22 of the Protection of Women from Domestic Violence Act, 2005 in D.V.C.No.50 of 2018 on the file of the Additional Mahila Court, Metropolitan Magistrate at Allikulam, Chennai is struck off. No costs. Consequently, connected miscellaneous petition is closed.

24.07.2023

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Index:Yes/No

Internet:Yes/No

Speaking/Non-speaking order

Nuetral Citation:Yes/No



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To-

The Additional Mahila Court,
Metropolitan Magistrate,
Allikulam, Chennai.



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V.BHAVANI SUBBAROYAN, J.

KKN

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