

**IN THE HIGH COURT OF JUDICATURE AT MADRAS****DATED : 11.12.2023****CORAM****THE HON'BLE MRS.JUSTICE T.V.THAMIL SELVI**

CRP.No.2859 of 2023
and
CMP.No.17716 of 2023

1. Dr.Janakiraman
2. Ramachandran
3. Radha

... Petitioners

Vs.

1. Manvizhi
2. Sowmiya

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to quash the entire proceedings against the petitioners relating to D.V.C.No.2 of 2023 now pending on the file of the learned Judicial Magistrate, Thittakudi.

For Petitioners : M/s.B.Asvini

For Respondents : No appearance

**ORDER**

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The petitioner has filed this petition to quash the entire proceedings against the petitioners relating to D.V.C.No.2 of 2023 now pending on the file of the learned Judicial Magistrate, Thittakudi.

2. The learned counsel for the petitioners submitted that 1st petitioner is the husband, and 2nd & 3rd petitioners are the father-in-law and mother-in-law of the complainant, against whom 1st respondent lodged a complaint. He further submitted that the 1st respondent suppressed the material fact and she left the matrimonial home on 15.07.2019, due to matrimonial dispute she unable to come to the matrimonial home. The 1st petitioner has filed a petition in HCP.No.2580 of 2022 before this Court, which was disposed on 19.12.2022. Thereafter, he filed a petition for Restitution of Conjugal Right in HMOP.No.5 of 2023, which is pending before the Sub-Ordinate Court, Omalur and also filed GWOP.No.69 of 2023 before the learned Family Judge, Cuddalore. He further submitted that the 2nd and 3rd petitioners have no way connected with the alleged matrimonial dispute, hence he prays to exist in the proceedings.



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3. On seeing the facts that, now the case is ripe for trial and P.W.1 was examined and the matter become parted. At this stage it cannot be entertained and liberty is granted to the petitioners to prefer all the defence before the trial Court. However, the proceeding are considered as like Civil in nature. The appearance of the parties are ordered to be dispensed with.

4. Considering the above, the petitioners are entitled to approach the concerned Magistrate Court itself and raise the issue of maintainability and other preliminary issues and if such an application is filed, the learned Magistrate shall decide the same as per the decision of the Hon'ble Supreme Court in ***Kunapareddy @ Nookala Shanka Balaji Vs. Kunapareddy Swarna Kumari and another*** reported in ***(2016) 11 SCC 774***.

5. On considering the entire facts and circumstances, this Court is of the clear view that the petitioners have not shown any legal ground or reason to quash the complaint and hence, this Court concludes that the Civil Revision is devoid of merits and the same is liable to be dismissed.



6. Regarding the petitioners' prayer for dispensing with their personal appearance, it is necessary to refer the following direction in **Arul Daniel's case** above referred,

“76.

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).”

7. The Hon'ble Full Bench has reiterated the legal position that the proceedings under the Domestic Violence Act are Civil in nature and as such, the respondent in the Domestic Violence complaint cannot be considered as accused and there is absolutely no need or necessity for them to appear for each and every hearing before the learned Magistrate. Hence, the learned Judicial Magistrate is directed not to insist the appearance of the petitioners 2 & 3 on every hearings, but at the same time, the learned Magistrate is at liberty to direct the petitioners 2 & 3 to appear if their appearance is necessary.



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8. With the above observation and direction, this Civil Revision Petition is disposed of. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

11.12.2023

Index : Yes/No
Speaking order / Non speaking order
Neutral Citation: Yes/No
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To

- 1.The Judicial Magistrate, Thittakudi.
- 2.The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMIL SELVI, J.

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