



WEB COPY



CRP. No. 4959 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP No. 4959 of 2023
and CMP No. 29077 & 29079 of 2023

1.M.Thangavel
2.N.Chellammal
3.T.Nandhini
4.T.Vinothini
5.S.Vijaykumar

...Petitioners

Vs.

1.N.Gayathri
2.T.Naveen Kumar

....Respondents

PRAYER : This petition filed under Article 227 of the Constitution of India, to call for the records pertaining to the petition in D.V.C No. 128 of 2023, on the file of Hon'ble Special Court for Protection against Domestic Violence, Coimbatore and strike off the same.

For Petitioners : Mr.R.Thamaraiselvan



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ORDER

These petitions have been filed to call for the records pertaining to the petition in D.V.C No. 128 of 2023, on the file of Special Court for Protection against Domestic Violence, Coimbatore and strike off the same.

2. The respondent herein filed DVC No. 128 of 2023 on the file of Special Court for Protection against Domestic Violence, Coimbatore against the petitioners herein. Hence, the petitioners filed this petition to quash the said DVC proceedings.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

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 on merits 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.



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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 petitioner's prayer for dispensing with his 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).”



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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 respondents 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 petitioner on every hearings, but at the same time, the learned Magistrate is at liberty to direct the petitioner to appear if her appearance is necessary.

8. With the above observation and direction, this Civil Revision Petition is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

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To

1. The Special Court for Protection against Domestic Violence, Coimbatore.



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T.V.THAMILSELVI,J.

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