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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2023

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THE HON'BLE MRS.JUSTICE T.V.THAMIL SELVI

CRP.No.4323 of 2023

and

C.M.P.Nos.26309 & 26312 of 2023

1. Siva selvi

2. Captain Thanigaivel

... Petitioners

Vs.

Sudha

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to strike off the Impugned Complaint in D.V.A.No.01 of 2023 on the file of the Judicial Magistrate Court, Uthukuli.

For Petitioners : Mr.K.Govi Ganesan

ORDER

The petitioner has filed this petition to strike off the Impugned Complaint in D.V.A.No.01 of 2023 on the file of the Judicial Magistrate Court, Uthukuli.



2. The learned counsel for the petitioner submitted that the petitioners are cousin brother of her husband and his wife, against whom she lodged a complaint, and highly defamatory allegations have been made against us which is untrue. He further submitted that the petitioners have no way connected with the alleged matrimonial dispute, hence he prays to exist in the proceedings.

3. On seeing the facts that, now the case is posted for counter objection 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***.



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

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.

08.12.2023

Index : Yes/No

Speaking order / Non speaking order

Neutral Citation: Yes/No

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To

1.The Judicial Magistrate, Uthukuli.

2.The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMIL SELVI, J.

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