



CRP. No. 3930 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2023

CORAM:

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

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& CMP No. 24220 & 24223 of 2023

1.P.Thangaraj
2.Deivanai

...Petitioners

Vs.

1.Yasotha
2.T.Mohankumar

....Respondents

PRAYER : This petition filed under Article 227 of Constitution of India, to call for the records pertaining to DVC No. 02 of 2023 pending on the file of the learned Judicial Magistrate, Sathyamangalam and strike off the name of the petitioners on the ground of abuse of process of law.

For Petitioner : Mr.M.Guruprasad

ORDER

This petition has been filed to call for the records pertaining to DVC No. 02 of 2023 pending on the file of the learned judicial magistrate, Sathyamangalam and strike off the name of the petitioners on the ground of



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abuse of process of law.

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2. The learned counsel for the petitioners submits that petitioners are the father-in-law and mother-in-law of the first respondent and second respondent is the first respondent's husband. Further he submits that soon after the marriage both the respondents moved to Bangalore and the petitioners were stayed in Namakkal and there is difference of opinion between the respondents. Hence, the petitioners were not aware about what had transpired between the couples in their home in Bangalore. But the petitioners were unnecessarily roped in D.V.C proceedings. Hence, he prays to strike off the name of the petitioners in DVC No. 02 of 2023 on the ground of abuse of process of law.

3. Heard the submission made by the learned counsel for the petitioners.

4. Considering the above, the petitioner 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



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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 strike off the name in D.V.C proceedings, 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



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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.

24.11.2023

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To

1. The Judicial Magistrate, Sathyamangalam.



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T.V.THAMILSELVI,J.

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