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CRP No.4246 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.4246 of 2023
and
CMP.No.25828 of 2023

1.S.Kamalesh
2.V.Kalaiyarasi
3.V.Santhanantham

... Petitioners

Versus

R.Hemavathy @ Soarna

... Respondent

Civil Revision Petition filed Under Article 227 of the Constitution of India, praying to call for the records in DVC.No.2 of 2023 on the file of the Judicial Magistrate-II, Ponneri and strike down the same as the continuance of same would amount to abuse of process of Court.

For Petitioners : Mr. Balaji Sankara Moorthy

ORDER

The petitioners have filed this revision petition to call for the records in DVC.No.2 of 2023 on the file of the Judicial Magistrate-II, Ponneri and strike down the same as the continuance of same would amount to abuse of process of Court.



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WEB COPY 2. Heard, Mr.Balaji Sankara Moorthy, learned counsel for the petitioners and perused the materials available on record.

3. The learned counsel for the petitioners submitted that, the marriage between the 1st petitioner and the respondent was solemnized on 28.08.2020, as per Hindu Rights and Customs Act, at Sree Thendayuthapaani Trust, South Madras Street, Thiruvotriyur, Chennai-19. On false promise the 1st petitioner receive 57 grams of gold jewels from the petitioner to arrange for a separate home. Due to matrimonial dispute, now the respondent is living in her parental home. He further submitted that the respondent has filed D.V.No.2 of 2023, under Section 12 of the Domestic Violence Act, 2005, before the learned Magistrate II, Ponneri against the revision petitioners.

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,



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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 petitioners/respondents on every hearings, but at the same time, the learned Magistrate is at liberty to direct the petitioners/ respondents 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. No costs.

20.11.2023

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

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To

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



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T.V.THAMILSELVI, J.

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