



C.R.P.No.4783 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2023

CORAM:

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

C.R.P.No.4783 of 2023
and
C.M.P.No. 28360 of 2023

1. P.Santhoshkumar
2. M.Palanisamy
3. Jagadambal
4. Jeevitha
5. Avinash

... Petitioners

-Vs-

Swathy

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to call for records relating to the petition in D.V.C.No.25 of 2023 on the file of learned Judicial Magistrate, Addl. Mahila Court, Namakkal and set aside the same by allowing the C.R.P.

For Petitioner : Mr. S.Kaithaimalai Kumaran



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ORDER

This Civil Revision Petition has been filed by the Revision Petitioners praying to call for records relating to the petition in D.V.C.No.25 of 2023 on the file of learned Judicial Magistrate, Addl. Mahila Court, Namakkal and to quash the same.

2. Since the relief claimed by the Revision Petitioners to quash the D.V.C. proceedings, notice to the respondent is dispensed with.

3. The learned counsel for Revision Petitioners would submit that the 1st revision petitioner is husband of respondent/defacto complainant. The 2nd and 3rd Revision Petitioners are his parents and 4th and 5th Revision Petitioners are his sister and sister's husband. The defacto complainant raised false allegations against the Revision Petitioners, but, in fact, the Revision Petitioners 2 to 5 have not interfered into the matrimonial life of 1st revision petitioner. Hence, they denied the allegations levelled against them and prayed to quash the proceedings.



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4. Records perused. On perusal of facts, it would reveals that they are entitled to raise their objections before the trial court, without which, the issue cannot be decided. However, all the parties are directed to take all their defence before the trial court and not before this court. Furthermore, considering the above, the Revision 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 Revision 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.



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6. Furthermore, with regard to their 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 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



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

8. With the above observation, this Civil Revision Petition is dismissed. Liberty is granted to the Revision Petitioners to work out their remedy before the Magistrate Court. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Speaking Order : Yes/No
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To

The Addl. Mahila Court, Namakkal.



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T.V.THAMILSELVI, J.

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