



CRP(PD)(MD)No.167 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.167 of 2023
and
CMP(MD)Nos.793 & 794 of 2023

1.Esakkiammal @ Kala
2.Lalitha
3.Annapoorani

... Petitioners

Vs

1.Kanaga
2.Esakki Suresh
3.Anthony @ Rajammal (Died)

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for records relating to the petition in D.V.A.C.No.1 of 2022, on the file of the Judicial Magistrate Court, Alangulam and strikeout the same insofar as the petitioners are concerned.

For Petitioner : Mr.S.Kumar



WEB COPY



CRP(PD)(MD)No.167 of 2023

ORDER

This Civil Revision Petition is filed as against the proceedings initiated by the first respondent herein in D.V.A.C.No.1 of 2022, on the file of the Judicial Magistrate Court, Alangulam. The petitioners herein are the respondents in D.V.A.C.No.1 of 2022.

2. The Hon'ble Full Bench of this Court, in the reference made in CrI.O.P.SR.Nos.31852 of 2022, etc. (batch), dated 17.11.2022, has answered as follows:

“A petition under Article 227 of the Constitution may still be maintainable if it is shown that the proceedings before the Magistrate suffer from a patent lack of jurisdiction. The jurisdiction under Article 227 is one of superintendence and is visitorial in nature and will not be exercised unless there exists a clear jurisdictional error and that manifest or substantial injustice would be caused if the power is not exercised in favour of the petitioner. (See Abdul Razak v Mangesh Rajaram Wagle



CRP(PD)(MD)No.167 of 2023

(2010) 2 SCC 432, Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v Tuticorin Educational Society (2019) 9 SCC 538). In normal circumstances, the power under Article 227 will not be exercised, as a measure of self-imposed restriction, in view of the corrective mechanism available to the aggrieved parties before the Magistrate, and then by way of an appeal under Section 29 of the Act.”

3. The Hon'ble Full Bench of this Court has also held that the personal appearance of the parties shall not be insisted upon, if the parties are effectively represented through a counsel. The relevant portion is extracted as under:

“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



CRP(PD)(MD)No.167 of 2023

domestic relationship shall be insisted only upon compelling reasons being shown. (See *Siladitya Basak v. State of West Bengal* (2009 SCC OnLine Cal 1903).”

4. This Civil Revision Petition is filed challenging the proceedings initiated by the first respondent herein in D.V.C.No.1 of 2022, as against the petitioners, under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and not filed on the ground of lack of jurisdiction. Therefore, this Civil Revision Petition is not maintainable before this Court, as per the decision rendered by the Hon'ble Full Bench (cited supra). However, this Court is inclined to dispose of the Civil Revision Petition in the following terms:

(i) If the petitioners are represented through a counsel, the learned Magistrate shall not insist on the personal appearance of the petitioners. However, the petitioners shall appear before the Court as and when their presence is required by the Court.



CRP(PD)(MD)No.167 of 2023

(ii) The learned Magistrate is directed to dispose of D.V.C.No.1 of 2022 as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order.

5. Accordingly, this Civil Revision Petition is disposed of.

No costs. Consequently, connected miscellaneous petitions are closed.

25.01.2023

Index : Yes / No.

Internet : Yes / No.

vrn

To

The Judicial Magistrate Court, Alangulam



WEB COPY



CRP(PD)(MD)No.167 of 2023

B.PUGALENDHI, J.

vrn

Order made in
CRP(PD)(MD)No.167 of 2023
and
CMP(MD)Nos.793 & 794 of 2023

25.01.2023