



C.R.P.(MD) No.372 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(MD) No.372 of 2023

and

C.M.P.(MD) No.1819 of 2023

Sivarampriya

... Petitioner

Vs.

M.Y.Jeyalakshmi

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to struck down the proceedings in D.V.C.No.7 of 2021 pending on the file of the Judicial Magistrate Court, Devakottai.

For Petitioner : M/s.S.Banumathy

For Respondent : Mr.V.R.Shanmuganathan

ORDER

This Civil Revision Petition has been filed to strike down the proceedings in D.V.C.No.7 of 2021 pending on the file of the Judicial Magistrate Court, Devakottai.



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2. The petitioner is the fourth respondent in D.V.C.No.7 of 2021, on the file of the Judicial Magistrate Court, Devakottai, filed by the respondent herein.

3. The respondent herein is married to the petitioner's brother Annamalai. The marriage is said to have taken place on 01.09.2019. In the D.V.C. proceedings initiated before the Judicial Magistrate Court, Devakottai, the respondent herein made certain allegations against the petitioner and her in-laws. The relevant portion of the allegation in the D.V.C. reads as under:-

"7. 2 முதல் 4 எதிர்மனுதாரர்கள் மனுதாரர் தங்குவதற்கு ஒரு அறை கூட கொடுக்காமல் வீட்டின் முகப்பில் உள்ள திண்ணையில் தங்கி கொள்ள சொல்லி கொடுமைகளை செய்துள்ளனர். அதனால் மனுதாரர் ஒரு மாதம் 1ம் எதிர்மனுதாரர் வீட்டில் தங்கி இருந்து கஷ்டத்தை அனுபவித்துள்ளார். 2 முதல் 4 எதிர்மனுதாரர்கள் மனுதாரர் உணவு தயார் செய்ய கூட விடாமல் தொடர்ந்து தொந்தரவு செய்துள்ளனர். அதனால் மனுதாரருக்கு உடல்நிலை பாதிக்கப்பட்டு தனது தாயார் வீட்டிற்கு 06.02.2021ம் தேதி வந்துள்ளார். 1ம் எதிர்மனுதாரர் மனுதாரரின் Whatsapp, Facebook, Lindon அனைத்து செயலிகளையும் Block செய்து வைத்துள்ளார். அதனால் மனுதாரர் 1ம் எதிர்மனுதாரரை தொடர்பு கொள்ள முடியாமல் இருந்து வருகிறார்."



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4. The specific case of the petitioner is that she is married to one Palaniappan, who is the resident of East Tambarama, Chennai. A copy of the Aadhar Card has been filed along with the typed set of papers.

5. It is submitted that the complaint against the petitioner as also her parents are based on the false averments. In any event, the petitioner is not concerned with the domestic dispute between the respondent and her brother Annamalai.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

7. The petitioner is the sister-in-law of the respondent herein. The petitioner's brother Annamalai married to the respondent on 01.01.2019 in Devakottai. On 05.09.2019, the respondent's husband (the petitioner's brother) Annamalai had left for Singapore in connection with work. Thereafter, the respondent's husband (the petitioner's brother) Annamalai took the respondent to Singapore for a short honeymoon on 13.09.2019.



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It appears that the respondent returned to India on 12.03.2020 and directly went back to his parental house in Coimbatore as her mother was ailing.

8. The respondent's husband (the petitioner's brother) Annamalai appears to have come back to India later on 21.11.2020 and directly went to his parental home in Karaikudi. It is the case of the petitioner that the petitioner was living in London, on returning from London to India she has settled in Adaiyar, Chennai and had visited her mother's house in Karaikudi as her mother was suffering from certain ailments.

9. At this stage, a compromise is said to have been arrived between the Panchyatars and the family members of the respondent's husband (the petitioner's brother) Annamalai on 24.12.2020 that the respondent's husband (the petitioner's brother) Annamalai should bring the respondent to his parental house. It appears that the respondent's husband (the petitioner's brother) Annamalai however did not bring the respondent to his parental house. Meanwhile, the respondent's husband (the petitioner's brother) Annamalai left for Singapore on 09.01.2021 without bringing the respondent to his parental house contrary to the compromise.



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10. Thereafter, the respondent appears to have come to her in-laws house on her own volition. The petitioner was at that time at her mother's house. The only allegation against the petitioner is that the petitioner along with her parents (in-laws of the respondent) refused to allow the accommodation to the respondent.

11. The Hon'ble Full Bench of the Madras High Court (Principal Seat of this Court), Chennai in a batch of Criminal Original Petitions in Crl.O.P.Sr.Nos.31852 of 2022 etc. in the case of **Arul Daniel Vs. Suganya and other cases.**, by its Judgment dated 17.11.2022, has laid down certain guidelines in Paragraph No.76 which reads as under:-

76. Before bringing the curtains down, for the sake of convenience and clarity, we reiterate the following directions passed by the learned single judge in Pathmanathan, supra, which shall now govern the disposal of applications under the D.V. Act:

“i. An application under Section 12 of the D.V. Act, is not a complaint under Section 2(d) of the Cr.P.C. Consequently, the procedure set out in Section 190(1)(a) & 200 to 204, Cr.P.C. as regards cases instituted on a complaint has no application to a proceeding under the D.V. Act. The Magistrate cannot,



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therefore, treat an application under the D.V. Act as though it is a complaint case under the Cr.P.C.

ii. An application under Section 12 of the Act shall be as set out in Form II of the D.V. Rules, 2006, or as nearly as possible thereto. In case interim ex-parte orders are sought for by the aggrieved person under Section 23(2) of the Act, an affidavit, as contemplated under Form III, shall be sworn to.

iii. The Magistrate shall not issue a summon under Section 61, Cr.P.C. to a respondent(s) in a proceeding under Chapter IV of the D.V. Act. Instead, the Magistrate shall issue a notice for appearance which shall be as set out in Form VII appended to the D.V. Rules, 2006. Service of such notice shall be in the manner prescribed under Section 13 of the Act and Rule 12(2) of the D.V. Rules, and shall be accompanied by a copy of the petition and affidavit, if any.

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)).



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v. If the respondent(s) does not appear either in person or through a counsel in answer to a notice under Section 13, the Magistrate may proceed to determine the application ex parte.

vi. It is not mandatory for the Magistrate to issue notices to all parties arrayed as respondents in an application under Section 12 of the Act. As pointed out by this Court in **Vijaya Baskar** (cited supra), there should be some application of mind on the part of the Magistrate in deciding the respondents upon whom notices should be issued. In all cases involving relatives and other third parties to the matrimonial relationship, the Magistrate must set out reasons that have impelled them to issue notice to such parties. To a large extent, this would curtail the pernicious practice of roping in all and sundry into the proceedings before the Magistrate.

vii. As there is no issuance of process as contemplated under Section 204, Cr.P.C. in a proceeding under the D.V. Act, the principle laid down in **Adalat Prasad v. Rooplal Jindal ((2004) 7 SCC 338)** that a process, under Section 204, Cr.P.C, once issued cannot be reviewed or recalled, will not apply to a proceeding under the D.V. Act. Consequently, it would be open to an aggrieved respondent(s) to approach the Magistrate and raise the issue of maintainability and other preliminary issues. Issues like the existence of a shared household/domestic relationship etc., which form the jurisdictional basis for entertaining an application under Section 12,



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can be determined as a preliminary issue, in appropriate cases. Any person aggrieved by such an order may also take recourse to an appeal under Section 29 of the D.V. Act for effective redress (**See V.K. Vijayalekshmi Amma v. Bindu V., (2010) 87 AIC 367**). This would stem the deluge of petitions challenging the maintainability of an application under Section 12 of the D.V. Act, at the threshold before this Court under Article 227 of the Constitution.

viii. Similarly, any party aggrieved may also take recourse to Section 25 which expressly authorises the Magistrate to alter, modify or revoke any order under the Act upon showing change of circumstances.

ix. In **Kunapareddy** (cited supra), the Hon'ble Supreme Court upheld the order of a Magistrate purportedly exercising powers under Order VI, Rule 17 of The Civil Procedure Code, 1908 (hereinafter referred to as "C.P.C."), to permit the amendment of an application under Section 12 of the D.V. Act. Taking a cue therefrom, it would be open to any of the respondent(s), at any stage of the proceeding, to apply to the Magistrate to have their names deleted from the array of respondents if they have been improperly joined as parties. For this purpose, the Magistrate can draw sustenance from the power under Order I Rule 10(2) of the C.P.C. A judicious use of this power would ensure that the proceedings under the D.V. Act do not generate into a weapon of harassment and would prevent the process of Court from being abused by joining all and sundry as parties to the lis.



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x. The Magistrates must take note that the practice of mechanically issuing notices to the respondents named in the application has been deprecated by this Court nearly a decade ago in **Vijaya Baskar** (cited supra). Precedents are meant to be followed and not forgotten, and the Magistrates would, therefore, do well to examine the applications at the threshold and confine the inquiry only to those persons whose presence before it is proper and necessary for the grant of reliefs under Chapter IV of the D.V. Act.

xi. In **Satish Chandra Ahuja** (cited supra), the Hon'ble Supreme Court has pointed out the importance of the enabling provisions under Section 26 of the D.V. Act to avoid multiplicity of proceedings. Hence, the reliefs under Chapter IV of the D.V. Act can also be claimed in a pending proceeding before a civil, criminal or family court as a counter claim.

xii. While recording evidence, the Magistrate may resort to chief examination of the witnesses to be furnished by affidavit (**See Lakshman v. Sangeetha, (2009) 3 MWN (Cri) 257**). The Magistrate shall generally follow the procedure set out in Section 254, Cr.P.C. while recording evidence.

xiii. Section 28(2) of the Act is an enabling provision permitting the Magistrate to deviate from the procedure prescribed under Section 28(1), if the facts and circumstances of the case warrants such a course, keeping in mind that in the realm of procedure, everything is taken to be permitted



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unless prohibited (See **Muhammad Sulaiman Khan v. Muhammad Yar Khan, (1888) 11 ILR All 267**).

xiv. 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 (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.”

12. A reading the above decision of the Hon'ble Full Bench of the Madras High Court (Principal Seat of this Court), Chennai makes it clear that although powers of the High Court under Article 227 of the Constitution of India cannot be curtailed, nevertheless, it would have incumbent on the part of the petitioner to move appropriate application for striking off the petitioner's name under Order 1 Rule 10(2) of the Code of



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Civil Procedure, 1908 as made applicable to the provisions of the Protection of Women from Domestic Violence Act, 2005.

13. This Court is therefore inclined to dispose of this Civil Revision Petition by giving liberty to the petitioner to file appropriate application before the Judicial Magistrate Court, Devakottai, under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 read with provisions of the Protection of Women from Domestic Violence Act, 2005, in terms of law clarified by the Hon'ble Full Bench of the Madras High Court (Principal Seat of this Court), Chennai in the case of **Arul Daniel** cited *supra*.

14. In case the Judicial Magistrate Court, Devakottai declines to strike off the petitioner's name, it is open for the petitioner to approach this Court. The Judicial Magistrate Court, Devakottai may also endeavour to call upon the parties for mutual settlement as *prima facie* the dispute between the respondent and her husband (the petitioner's brother) appears to be no major.

15. It is made clear that the petitioner appears to be a third party apart from the relationship with the respondent as a sister-in-law.



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Therefore, the physical appearance of the petitioner before the Judicial Magistrate Court, Devakottai in respect of D.V.C.No.7 of 2021 shall stand dispensed with. However, the petitioner shall appear through her counsel before the Judicial Magistrate Court, Devakottai.

16. Accordingly, this Civil Revision Petition is disposed of with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

19.06.2023

NCC : Yes/No
Internet: Yes/No
Index: Yes/ No
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To

The Judicial Magistrate Court,
Devakottai.



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