



C.R.P(MD)No.836 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.03.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.836 of 2023

1. N.Johnsy Rani

2. Minor.Satheeshwaran

3. Minor. Kanishka

... Petitioners/Petitioners

*(P2 and P3 are represented through
her mother and natural guardian)*

Vs.

1. Nagendhran

2.M.Aavudaiyammal

3. R.Vasuki

4.M.Subburaj

5.S.Mariyammal

...Respondents/Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to direct the Learned Principal Sessions Judge, Tuticorin, Tuticorin District to take the Appeal Memorandum filed in F.No.8107/2022 in Cr.M.P No.12066 of 2022 in D.V.C 44 of 2022 on file.



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For Petitioner : Mr.Ka.Raamakrishnan

ORDER

The petitioners are aggrieved by the impugned docket order, dated 23.12.2022 passed by the Learned Principal Sessions Judge, Tuticorin, Tuticorin District in Appeal Memorandum filed in F.No.8107/2022 in Cr.M.P No.12066 of 2022 in D.V.C.No.44 of 2022. Relevant portion of the docket order, dated 23.12.2022 reads as under:

"The Full Bench of the Hon'ble High Court Madras in the batch of Crt O.Ps has delivered this Judgment on 17.11.22. In which it has been laid down.

The Magistrate can deviate from the procedure perchieved U/s 28 (1) of DV Act and with regard to the procedure to be followed everything is taken to be permissible unless prohibited.

2) As per section 25 of DV Act, any party aggrieved may also take recourse to Sec.25 which expressly authorizes the Magistrate to alter modify or revoke any order under the Act upon showing change of circumstances.

The appellant has filed appeal by challenging the order of Magistrate that the Magistrate has failed to exercise his power and passed an order to the effect that CrM.P. 12066/22to he called along with main DV case. If the power is not exercised by Magistrate to dispose the Cr.M.P. 12066/22 separately, the same cannot be challenged in the way of appeal and remedy of aggrieved person will be file petition before the Magistrate U/s 25 of DV Act or Petition before me Hon'ble High Court by invoking Article 227 of Constitution."



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2. Aggrieved by the order of the Judicial Magistrate-II, the petitioner filed above criminal appeal before the Principal Sessions Judge, Tuticorin. The appeal filed by the petitioners was earlier returned pointing out certain defects, which were apparently also complied by the petitioner.

3. The Magistrate has declined to pass appropriate order in an interlocutory application filed by the petitioner by stating that it can be considered when final order is passed in DVC proceedings. An order declining to pass orders on merits is an order. Therefore, a person aggrieved by such order, can file an appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 before the Appellate Court.

4. Considering the above, the impugned docket order, dated 23.12.2022 is set aside and direction is issued to the learned Principal Sessions Judge, Tuticorin to number the appeal filed by the petitioner and pass appropriate orders on merits and in accordance with law.



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5. The present Civil Revision Petition stands disposed of with the above observations. No costs.

28.03.2023

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

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Note: Registry is directed to return the original copy of the impugned order.

To

1.The Learned Principal Sessions Judge,
Tuticorin, Tuticorin District.

2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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