



C.R.P.(MD)No.3224 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.3224 of 2023

and

C.M.P.(MD)Nos.16619 and 16620 of 2023

Joseph Xavier Jeyanth : Petitioner/Respondent

Vs.

Mary Josephine Sheila : Respondent/Petitioner

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to strike off the proceedings in D.V.C.No.99 of 2023 pending on the file of the learned Judicial Magistrate No.II, Tuticorin.

For Petitioner : Mr.V.Kathirvelan, Senior Counsel,
for Mr.K.Jeyamohan.

ORDER

The Civil Revision Petition has been filed, invoking Article 227 of the Constitution of India, seeking orders to call for the records in



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D.V.C.No.99 of 2023 pending on the file of the learned Judicial Magistrate No.II, Tuticorin and strike off the same.

2. The respondent has filed a petition under Section 12 of the Domestic Violence Act against her husband. The learned Magistrate, after taking the petition on file in D.V.C.No. 99 of 2023, has issued summons to the petitioner to appear before the said Court.

3. It is not in dispute that the marriage between the petitioner and the respondent was solemnized on 09.01.2017 and at that time, the respondent was working as a Chartered Accountant in Syringa Enterprises, Mazabuka, Zambia and the petitioner was studying his Master's course in Yale University at USA and that the respondent has filed the above complaint against the petitioner.

4.No doubt, the Hon'ble Full Bench of this Court in *Arul Daniel and others Vs. Suganya and others* reported in *2023 Cri. LJ 339*, while answering the reference, has specifically held that Section 482 of Code of



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Criminal Procedure has no application for challenging a proceedings under Section 12 of the Domestic Violence Act, but Article 227 of the Constitution of India can be invoked and it is necessary to refer the following passages hereunder:-

“40 The next question is whether the proceedings under Chapter IV of the D.V. Act can be assailed by way of a petition under Article 227 of the Constitution. Indubitably, the power of judicial review under the said provision is a part of the basic structure of the Constitution. After the decision of the Constitution Bench in L.Chandra Kumar v Union of India 27 , it is no longer open to doubt that the power of judicial review under Articles 226/227 cannot be taken away even by a constitutional amendment, let alone by a statute. Nevertheless, the existence of power is one thing and the exercise of power is quite another. Though the power of superintendence under Article 227 over the proceedings of the Magistrate under the D.V. Act exists, its exercise would, no doubt, be conditioned on certain very salutary principles one of which is that a High Court will not exercise its power of superintendence if there exists an efficacious alternative remedy.



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41. As has been adverted to, *supra*, the legislature has very thoughtfully provided an appellate remedy, under Section 31 of the D.V. Act, before the Court of Session against an order of the Magistrate. The existence of an appellate remedy would almost always be a “near total bar” for exercising power under Article 227, as has been pointed out by the Supreme Court in *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society* 28 . An exception to the aforesaid rule is where the proceedings before the Court below are patently lacking in jurisdiction. An illustrative instance of such a case is where a Magistrate, who does not possess jurisdiction under Section 27, entertains an application under the D.V. Act or where the reliefs sought are outside the scope of the Act, etc. Such instances would, no doubt, be few and far between. We only reiterate that the policy of the D.V. Act is expedition, which cannot be achieved if all and sundry orders are called into question before the High Court. This aspect must necessarily weigh with the learned single judges while exercising jurisdiction under Article 227 in a challenge to proceedings under the D.V. Act.”



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5. The Hon'ble Full Bench, while summarizing their conclusions, has specifically observed that a petition under Article 227 of the Constitution is maintainable on a limited ground of patent lack of jurisdiction and except on the limited ground indicated, jurisdiction under Article 227 of the Constitution will not be exercised, as a measure of self-imposed restriction, by-passing the statutory remedies under the D.V. Act, in the light of the decision of the Supreme Court in ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society and others*** reported in (2019) 9 SCC 538. In the present case, it is not the case of the petitioners that there is patent lacking of jurisdiction.

6. It is necessary to refer the direction passed by the learned Judge of this Court in ***Dr.P.Pathmanathan Vs. V.Monica*** reported in 2021 1 MLJ (Cri) 311, which was reiterated by the Hon'ble Full Bench in ***Arul Daniel's case*** above referred,

“76 Before bringing the curtains down, for the sake of convenience and clarity, we reiterate the following directions passed by the learned single in Pathmanathan, supra, which shall now govern the disposal of applications



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under the D.V. Act:

.....

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.”

7. It is necessary to refer the direction No.vii passed by the learned Judge in ***Pathmanathan's case***, which was reiterated by the Hon'ble Full Bench,

“76.

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



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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, 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.”

8. Considering the above, the petitioner is 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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9. On considering the entire facts and circumstances, this Court is of the clear view that the petitioner has 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.

10. Regarding the petitioner's prayer for dispensing with his 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).”

11. The Hon'ble Full Bench has reiterated the legal position that the



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proceedings under the Domestic Violence Act are civil in nature and as such, the respondent 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 petitioner/respondent on every hearings, but at the same time, the learned Magistrate is at liberty to direct the petitioner/respondent to appear if their appearance is necessary.

12. With the above observation and direction, this Civil Revision Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

07.12.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
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To

- 1.The Judicial Magistrate No.II,
Tuticorin.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Order made in
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