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C.R.P.(PD).No.1011 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.1011 of 2024
and C.M.P.Nos.5232 and 5233 of 2024

1.A.Sivakumar

2.M.Ayyasamy

3.A.Bakiyam

... Petitioners

VS

S.Gayathiri

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to call for the records relating to the D.V.A.No.180 of 2023 on the file of the DVA Special Court at Coimbatore and strike off the same.

For Petitioners : Ms.K.Anusuya

For Respondent : Mrs.Radhika Boopathi

ORDER

The Civil Revision Petition is filed challenging the complaint made by the wife of the 1st petitioner under the Domestic Violence Act.

2. The proceedings initiated under Domestic Violence Act has been



challenged by the petitioners on the ground that complaint was lodged after three years of separation from the 1st petitioner. Terming the complaint as an abuse of process of the Court, the petitioners seeks this Court to strike out the same from the file of DVA Special Court at Coimbatore.

3. The Full Bench of this Court in ***Arul Daniel vs. Suganya*** reported in ***(2022) 4 MLJ (Crl) 561***, while considering the remedy available to the aggrieved person in domestic violence cases against whom proceedings were initiated observed as follows:-

“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 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



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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.”

4. In view of the law laid down by the Full Bench of this Court in **Arul Daniel vs. Suganya** reported in **(2022) 4 MLJ (Crl) 561**, the petitioner is at liberty to approach the concerned Magistrate and raise all jurisdictional and maintainability issues.

5. With this liberty, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected civil miscellaneous petitions are closed.

19.03.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

The DVA Special Court, Coimbatore.



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S.SOUNTHAR, J.

dm

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