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C.R.P.No.503 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.503 of 2022
and C.M.P.Nos.2646 and 2647 of 2022

1.Mukesh Jain
2.Suresh Jain
3.Ashok Jain

... Petitioners

-Vs-

Kaushalya

... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to call for the records of the complaint in D.V.C.No.21 of 2014 on the file of the XVI Metropolitan Magistrate, George Town, Chennai.

For Petitioners : Mr.M.K.Kabir, Senior Counsel
for Ms.Revathi G.Mohan

For Respondent : Mr.N.Seshadri

ORDER

This Civil Revision Petition seeks to quash D.V.C.No.21 of 2014 on the file of the XVI Metropolitan Magistrate, George Town, Chennai. The petitioners before me are the husband and brothers-in-law of the respondent.

2. The fact that the first petitioner and the sole respondent were married on 17.05.1995 is not in dispute. It is also not in dispute that they were living in



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a shared household in Jodhpur. The cause of action for the complaint in D.V.C.No.21 of 2014 is that on 07.04.2014, the petitioners herein had assaulted the respondent by slapping her. According to the domestic incident report filed under Section 9(b) and Section 37(2)(c) of the Protection of Women from Domestic Violence Act, 2005, there was a physical injury that was caused to the respondent by the husband and the brothers-in-law on account of the 'slapping', and there was also mental harassment of the respondent by the petitioners as they used abusive language at her. The domestic incident report was forwarded to the jurisdictional Magistrate viz., XVI Metropolitan Magistrate, George Town, Chennai, who took the matter on file as D.V.C.No.21 of 2014. To quash the said proceedings, the present revision arises before me.

3. Mr.M.K.Kabir, learned Senior Counsel representing Ms.Revathi G.Mohan would submit that the following facts would support the quash of the proceedings. They are :

- (i) The petitioner and the respondent admittedly are not living together from 01.09.2003.
- (ii) No police complaint or witnesses were examined by the Protection Officer as would be clear from Form-I filed by him before the Court.
- (iii) The incident had taken place on 07.04.2014 but the domestic incident report came to be lodged only on 21.05.2014 and,



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(iv) Finally he would submit that the petitioners 2 and 3 were not even in Chennai on the date of the alleged incident is said to have taken place.

4. Mr.N.Seshadri would submit that as conditional order was not complied with in CrI.M.P.No.11495 of 2022, the exparte order passed in the CrI.M.P. had been made absolute, and therefore nothing remains to be decided in this D.V.C.No.21 of 2014. He would thereafter rely upon the previous order in C.R.P.No.503 of 2022 dated 19.09.2022, to state that a criminal revision petition alone is maintainable and a civil revision petition is not maintainable, and therefore, he would seek for dismissal of this revision.

5. I have carefully considered the arguments on either side. Insofar as the scope of quashing a complaint under Article 227 of the Constitution of India is concerned, the Court must take a complaint at the face value. After having taken the complaint on face value, if no complaint as alleged is made out, it is certainly open to the Court to quash the proceedings.

6. Now let us look at the complaint before the Court in the present case. The incident of domestic violence as alleged is that, the petitioners herein had indulged in two forms of violence viz., physical violence in the form of 'slapping' of the respondent and mental harassment of the respondent by using abusive language. As per Section 3 of the Protection of Women from Domestic Violence



Act, 2005, any act, commission or omission of conduct of a party constitutes domestic violence if it satisfies any one of the clauses (a) to (d) of the said provision. In this particular case, the respondent has alleged that the petitioners had abused her and had also slapped her. This, if proved, would certainly fall under the category of physical abuse and verbal abuse. The fact that they were not living together from 01.09.2003 does not make a difference to the present complaint because the cause of action of this complaint is the alleged incident that is said to have taken place on 07.04.2014.

7. Insofar as the factum that no police complaint or witness had been examined by the Protection Officer is concerned, a perusal of the Rules framed along with the Act would show that the Protection Officer is not empowered to conduct an enquiry before coming at a prima facie satisfaction whether the allegations are true or not. The duties of the Protection Officer is set forth under Rules 5 and 8 read with Rule 10. Under Rule 5 and Rule 8, on receipt of a complaint of domestic violence, the Protection Officer should prepare an incident report. After having done so, he has to forward the same to the concerned Magistrate. If the domestic incident report does not disclose a cause of action then certainly the Protection Officer can reject the same. However, if the allegations made in the complaint bring forth a domestic incident, the Protection Officer cannot retain the document with himself, but necessarily he has to forward it to the Magistrate.



8. In fact, the forms which have been created in terms of Rules 5(1) and 5(2) and 17(3) of the Protection of Women from Domestic Violence Rules, give an option to the aggrieved woman, either to produce documents and witnesses if necessary or leave the same blank. This shows that at the time of preparation of the domestic incident report, the concerned aggrieved woman can either produce documents or can always produce the same after the said report is forwarded to the Magistrate during the time of trial. Therefore, I am not persuaded to quash the complaint on the ground of lack of police complaint or lack of name of the witnesses in the domestic incident report.

9. Turning to the third aspect, Mr.M.K.Kabir would point out that there is a delay in lodging of the domestic incident report. Delay in lodging an FIR or domestic incident report, in my view, cannot be a ground to quash the complaint. It would certainly be a ground at the time of appreciation of evidence at the time of final disposal. At that stage, the aggrieved woman can give reasons as to why she has approached the Protection Officer with delay, and if those reasons are not convincing, I am certain that a Magistrate would pass an order dismissing the domestic violence complaint. *Ex-facie* delay in filing a domestic violence complaint cannot attract the provisions of Article 227 of the Constitution of India unless and until the delay is of such magnitude that the memory of the witnesses would have faded away. This is not such a situation. The witnesses to the incident is the woman herself, and she had been allegedly



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slapped and abused on 07.04.2014, and the complaint was lodged on 21.05.2014. Leaving open this point to be agitated at the time of trial, I conclude that this too is not a ground to quash the domestic violence complaint.

10. Finally, the last point urged by Mr.Kabir is that the brothers ie., the petitioners 2 and 3, were never available in Chennai on 07.04.2014. This is a plea in alibi and alibi requires evidence. Sitting under Article 227 of the Constitution of India, I cannot draw presumptions which necessarily would have to be done at the time of trial.

11. In the light of the above discussion, none of the points urged by Mr.Kabir make out any ground for quashing the domestic violence complaint at the threshold.

12. Insofar as the argument of learned counsel for the respondent regarding the previous order passed by my brother Justice S.Sounthar in this case on 19.09.2022 that only a criminal original petition under Section 482 of the Code of Criminal Procedure is maintainable and not a revision under Article 227 of the Constitution of India is concerned, that was a verdict which was rendered before the judgment of the Full Bench. The learned Judge had relied upon the judgment of the Division Bench of Justice M.Doraiswamy and Justice Sunder Mohan dated 12.07.2022. The position of law that has been rendered by the



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Division Bench had been modified by a Full Bench of this Court subsequently in the case of **Arul Daniel Vs. Suganya (2022 SCC Online Mad 5435)**.

Therefore, the reliance placed upon the Division Bench order is of no use to the respondent.

13. The other order that has been relied upon by Mr.Seshadri is an order passed in Crl.M.P.No.11495 of 2022. That is an interlocutory order passed by the learned XVI Metropolitan Magistrate, George Town, Chennai on 21.04.2023. I am surprised by the submission that an interlocutory order should bind the case at the time of final disposal. Even if a person is set exparte, it does not foreclose his rights to defeat the case of the complainant at the time of cross examination. The effect of setting a person exparte means that he is not entitled to let in evidence on his behalf, but that does not preclude the petitioners herein from cross examining the respondent, and disproving the allegations made against them. Therefore, the order passed in Crl.M.P.No.11495 of 2022 also does not assist the case of the respondent.

14. In the light of the above discussion, I do not find any reason to quash the proceedings in D.V.C.No.21 of 2014 on the file of the XVI Metropolitan Magistrate, Goerge Town, Chennai. The Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.



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15. Mr.Kabir makes a request that the presence of the petitioners 2 and 3 may be dispensed with as they are senior citizens. Taking into consideration the allegations made in the complaint and the fact that they are senior citizens and are residing in Jodhpur, I am inclined to dispense with the appearance of the petitioners 2 and 3 for all non-essential and procedural hearings. They shall, however, be present where their presence is indispensable.

Index : Yes/No

Neutral Citation : Yes/No

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Note : Issue order copy on 29.04.2024

To

The XVI Metropolitan Magistrate
George Town
Chennai.



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V. LAKSHMINARAYANAN, J.

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