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C.R.P.(PD).No.2610 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2610 of 2021
and C.M.P.No.19385 of 2021

1.Lyakath

2.Roshan

... Petitioners

VS

Sabaren Lyakath

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to strike off the complaint in D.V.A.No.20 of 2017 on the file of Judicial Magistrate-I, Coimbatore.

For Petitioners : Mr.J.Pothiraj

For Respondent : No Appearance

ORDER

The Civil Revision Petition is filed challenging the proceedings initiated by the respondent herein under Section 23(2) of the Protection of Women from Domestic Violence Act, 2005 in D.V.A.No.20 of 2017 on the file of Judicial Magistrate-I, Coimbatore.

2. The proceedings initiated under the Domestic Violence Act has been



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challenged on the ground that the respondent had preferred the instant complaint against the petitioners after 27 years from the date of marriage between the 1st petitioner and respondent just to harass the petitioners.

3. The Full Bench of this Court in **Arul Daniel vs. Suganya** reported in **(2022) 4 MLJ (CrI) 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 Vijayalekshmi Amma v Bindu. V., (2010) 87



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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 settled by the Full Bench of this Court in ***Arul Daniel vs. Suganya*** reported in ***(2022) 4 MLJ (Crl) 561***, the Civil Revision Petition is dismissed with liberty to the petitioners to raise all their objections regarding maintainability and preliminary issues before the concerned Magistrate. No Costs. Consequently, the connected civil miscellaneous petition is closed.

29.01.2024

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

To

The Judicial Magistrate-I,
Coimbatore.



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S.SOUNTHAR, J.

dm

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