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C.R.P.No.1137 of 2024.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.1137 of 2024

and

C.M.P. No.5887 of 2024

T. Anandavalli

... Petitioner

Vs.

Vijayalaksmi

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to struck off the proceedings vide D.V.C. No.79 of 2019 pending on the file of learned XVIII Metropolitan Magistrate, Saidapet, Chennai as against the petitioner / 2nd respondent.

For Petitioner

: Mr. D. Manimaran

ORDER

The Civil Revision Petition is filed challenging the proceedings initiated by the respondent under Domestic Violence Act in D.V.C. No.79 of 2019.



2. The learned counsel appearing for the petitioner submits that the petitioner is the mother in law of the respondent and there is no specific allegation made against the petitioner in the complaint preferred by the respondent and therefore, the learned Magistrate ought not to have taken cognizance of the complaint as against the petitioner.

3. The Full Bench of this Court in the case of **Arul Daniel vs. Suganya** reported in **(2022) 4 MLJ (Crl) 561**, while considering the maintainability of the Civil Revision Petition under Article 227 of Constitution of India challenging the initiation of proceedings under Domestic Violence Act 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



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C.R.P.No.1137 of 2022.

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.”

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 petitioner to appear before the very same Magistrate and raise all her objections as to the maintainability of the complaint as well as other jurisdictional issues.

5. The learned counsel for the petitioner submitted that the petitioner is 81 years old lady and therefore, her personal appearance may be dispensed with before the Judicial Magistrate.



C.R.P.No.1137 of 2024.

WEB COPY

6. It is open to the petitioner to file proper application before the concerned Magistrate seeking to dispense with her personal appearance. If any such application is filed, the same shall be considered by the learned Magistrate in accordance with the law.

7. With this liberty, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

27.03.2024

Index : Yes / No
Internet : Yes / No
mjs

To

The XVIII Metropolitan Magistrate, Saidapet, Chennai.



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C.R.P.No.1137 of 2024.

S.SOUNTHAR, J.
mjs

CRP.No.1137 of 2024

27.03.2024