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C.R.P.(PD)No.1251 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.1251 of 2022

and

C.M.P.No.6779 of 2022

S.Arulselvam

.. Petitioner

Vs.

1.Dhivyaa

2.M.Sundaravadivel

3.Jayamani

4.S.Sivasakthivel

5.Mathushri

.. Respondents

Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records pertaining to the case pending in D.V.C.No.6 of 2021 on the file of the learned Additional Mahila Court at Egmore and struck off the same.

For Petitioner : Mr.S.Duraisamy
for Mr.V.Elangovan

For Respondents : M/s.R.A.Monolisa



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ORDER

WEB COPY The husband is the civil revision petitioner. He seeks quashing of D.V.C.No.6 of 2021 on the file of the Additional Mahila Court at Egmore.

2. It is not in dispute that the husband and wife were married. According to the husband, they separated in the year 2013 but the D.V.C. complaint had been filed only in the year 2021.

3. Mr.S.Duraisamy, appearing for Mr.V.Elangovan, would submit the following :

(a) There are no allegations as against the petitioner/husband/5th respondent, whereas, allegations have been made against the other respondents and therefore, the Domestic Violence Complaint will not maintainable as against the petitioner.

(b) As the husband and wife are not living together, the Domestic Violence Complaint is not maintainable.

(c) He would rely upon the judgment made in ***Inderjit Singh Grewal***



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vs. State of Punjab & Another [(2011) 12 SCC 588] and would submit that the proceedings are abuse of process of law and deserves to be quashed under Article 227 of Constitution of India.

4. The principle on which the proceedings are quashed in exercise of power under Article 227 of Constitution of India is that the Court will have to take the complaint at its face value and it should come to a conclusion that the complaint *prima facie* does not make out an offence as contemplated under the Act. The test is that the complaint should be taken at its “face value” and the Court has to presume that the allegations made in the complaint are true and on that basis, no offence is to be made out as against the respondent.

5. Insofar as the 2nd argument is concerned, the law does not contemplate a husband and wife residing together for the purpose of initiating Domestic Violence Complaint. Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 defines what is the domestic relationship :



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“domestic relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family”

6. A reading of the definition shows that when two persons have been residing in a “shared household” either by marriage or through a relationship, they are deemed to be living/have lived together and they are treated to be in a domestic relationship. Therefore, the fact that the husband and wife are separated, today, does not mean the Domestic Violence Complaint cannot be presented by the wife. She is entitled to bring it to the notice of the learned Special Court of acts of Domestic Violence as contemplated under Section 2(g) read with Section 3 of the Protection of Women from Domestic Violence Act, while the marriage was subsisting.

7. A reading of the complaint especially Paragraph Nos.7 to 15 discloses that she has made allegations as against the petitioner and other respondents. The definition of Domestic Violence is very wide and includes any act of the husband or the partner in matters which affects her well being. The averment made in Paragraph No.7 makes it very clear that the civil



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revision petitioner/husband kept quiet when the 2nd and 3rd respondents were allegedly mistreating the first respondent herein. This covers the concept of well being of the wife. The other allegations in the petition are also specific as against the civil revision petitioner.

8. Insofar as the reliance on judgment of **(2011) 12 SCC 588** is concerned, that was the case where the husband and wife agreed and went in for a consent divorce invoking the provision of Section 13B of Hindu Marriage Act. After having settled the issues, the wife invoked a provision of Domestic Violence Act. In the aforesaid circumstances, the Supreme Court came to the conclusion that as long as the decree of mutual consent stands, any initiation of proceedings under Domestic Violence Act is an abuse of process of law. Therefore, the said judgment does not apply to the facts of the present case.

9. Applying the test that had been laid down by the Supreme Court to the facts of the present case, I am able to come to the conclusion that there are *prima facie* allegations made against the petitioner and therefore, I am not inclined to interfere with the Domestic Violence Complaint.



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WEB COPY 10. In the light of the above discussion, the Civil Revision Petition stands dismissed. No costs. The connected Civil Miscellaneous Petition is closed.

11. It is left open to the petitioner and other respondents in Domestic Violence Complaint to agitate all the issues and raise all the defences that are available to them during the course of trial.

23.04.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

To

The Additional Mahila Court,
Egmore

V. LAKSHMINARAYANAN, J.

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