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C.R.P.(PD).No.1168 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.1168 of 2023 &
C.M.P.No.8083 of 2023

1.N.Jayachandran
Nedunchezhiyan (Died)
2.Lakshmi @ Vimala
3.Rasathi

... Petitioners

-Versus-

J.Geetha

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records pertaining to DVC.No.33 of 2020 on the file of the XXIII Metropolitan Magistrate Court, Saidapet, Chennai and quash the same.

For Petitioner : *Mr.C.Uma Shankar*
for Mr.B.P.Vinoth
For Respondent : *No appearance*

ORDER

This Civil Revision Petition seeks to quash DVC.No.33 of 2020 on the



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file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai.

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2. The civil revision petitioners are the respondents in the domestic violence complaint. They would plead that the complaint was taken on file in a mechanical manner and that, it reflects non application of mind. They would further plead that there was no marriage between the first petitioner and the respondent, and no document evidencing the marriage had been filed before the Court. Apart from that, since the respondent had admitted in the petition that the petitioners and the respondent are not in talking terms for more than ten years, it requires the proceedings be quashed.

3. Insofar as the plea for quashing the domestic violence case is concerned, it is similar to a plea under Order VII Rule 11 of the Code of Civil Procedure. It is the duty of the court to take the complaint at its face value and come to a conclusion that despite such an effort, the requirements of the Domestic Violence Act are not satisfied. With this principle as touch stone, I now look at the domestic violence petition.

4. The respondent has specifically pleaded that she and the first petitioner herein got married in the year 2002 and from the wedlock, two



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children were born on 27.02.2004 and 26.06.2006. The wife further pleads that

it is a habit of the first civil revision petitioner/first respondent husband to consume alcohol everyday; come back in a drunken state to the matrimonial home; and physically and verbally abuse the complainant. She would further plead that it used to be the habit of the first civil revision petitioner/husband to stand on the road where the respondent/wife used to reside and abuse her and put her to shame. She would plead that she made several visits to the house of the civil revision petitioners seeking permission to reside in a portion thereof along with her children, but the civil revision petitioners refused to accede to the said request. She would state that the husband is earning Rs.40,000/- per month as an electrician and apart from that, he is earning income by letting out the property under his control to several third parties. On these pleadings, she seeks for protection under Section 18, namely, residential order directing the wife to be accommodated in the premises belonging to the civil revision petitioners and the monetary relief by way of maintenance for a sum of Rs.20,000/-

5. Apart from the domestic violence complaint, a perusal of the E-court records would show that the then Judicial Magistrate dealing with the



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complaint closed the evidence and also threatened the learned counsel appearing for the civil revision petitioners with proceedings before the bar council. In fact, he had gone ahead and closed the evidence forfeiting the right of the civil revision petitioners to let in evidence. The civil revision petitioners being left with no other alternative had approached this Court.

6. Taking into consideration the manner in which the proceedings went on, notice was issued in the revision and finding that the learned Judicial Magistrate was proceeding with the matter in a hurried manner, the entire proceedings were stayed. Notice was issued to the sole respondent. Despite multiple attempts to serve the notice, it shows the respondent could not be served. Therefore, I took up the revision for final disposal.

7. I have heard Mr.C.Umashankar for the civil revision petitioners.

8. Mr.C.Umashankar, relying upon section 468 of the Code of Criminal Procedure which fixes the period of limitation for the purpose of initiation of criminal complaint, would submit that the complaint is barred by limitation. He would further point out that the learned Judicial Magistrate had attempted to



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conclude the proceedings without giving any reasonable and fair opportunity to the petitioners. He would state that it was under these circumstances, the petitioners, left with no other option, were constrained to approach this court.

9. I have carefully applied my mind to the facts of the present case and recollected the principles relating to quashing of domestic violence case. For a complaint to be quashed in exercise of the power under Article 227 of the Constitution of India, I should come to a conclusion that the allegations made in the petition do not come under Section 3 of the Protection of Women from Domestic Violence Act. Under Section 3, any act, which tends to affect the physical, sexual or emotional quality of an aggrieved person, attracts the wrath of the said provision.

10. A careful perusal of the complaint shows that the first petitioner had not only consumed liquor, but had also physically beat the respondent. The complaint further proceeds that the first civil revision petitioner, who is the husband, used to go to the residence of the respondent/wife, stand on the road and abuse her, resulting in great shame to the wife. These allegations attract Section 3. Whether they are true or false can be gone into only at the time of



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trial. As pointed out above, in case the complaint *prima facie* makes out the allegations under Section 3, it cannot be a subject matter of quashing.

11. Insofar as the argument with respect to Section 468 of Cr.P.C. is concerned, a Full Bench of this Court has concluded that though the domestic violence complaint is entertained by the Judicial Magistrate, and is proceeded by way of Criminal Procedure Code, the order that follows the proceeding is civil in nature.

12. In the light of the Full Bench, I am not willing to import the principles of Section 468 of Cr.P.C. into the domestic violence proceedings. Apart from that, there is a claim of maintenance and right to sue for maintenance accrues every month that the first civil revision petitioner does not pay the same to the wife and children. The cause of action being a continuous one, it will not be covered in terms of Section 468 of Cr.P.C. But these are only *prima facie* findings.

13. It is always open to the civil revision petitioners to convince the learned Judicial Magistrate that the complaint is not worth being tried upon



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after giving evidence to substantiate the same. Suffice it to say, I find sufficient materials for the purpose of taking the domestic violence complaint on file and it is not a case for quashing at the threshold.

14. At this stage, Mr.C.Umashankar would draw my attention to the proceedings before the learned XXIII Metropolitan Magistrate dated 12.07.2022. By the said proceedings, the learned Magistrate recorded the evidence, but had forfeited the right of the civil revision petitioners to cross examine the complainant. In addition on 08.11.2022, the learned Magistrate had return a finding that since cross examination is not specific and in accordance with law, it is stopped. On 02.03.2023, the learned Magistrate also forfeited the right of the civil revision petitioners to adduce evidence. He had, previous to that occasion, forfeited the cross examination of the civil revision petitioners on 12.01.2023.

15. The court must always endeavor for speedy disposal of the case but if the proceedings are conducted in an hurried manner, it might result in prejudice to either parties. The court while leaning in favour of the complainant must not forget its duty as an arbitrator to give a level field for the complainant as well



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as the respondent.

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16. Mr.C.Umashankar would also submit that the learned Magistrate who passed the order in January and March 2023 has been transferred and a new Magistrate has taken over. Therefore, the apprehension of the civil revision petitioners that they might not get justice in the hands of the Judicial Magistrate stands allayed.

17. With the new officer taking over, he is requested to give sufficient opportunity to the civil revision petitioners as well as the complainant/sole respondent and proceed in accordance with law. He shall reopen the case in order to enable the civil revision petitioners to cross examine the complainant.

18. The court is directed to issue notice to the complainant to be present for hearing on 29.07.2024. The remaining cross examination of the complainant should commence on 29.07.2024 and be concluded on or before 02.08.2024. Thereafter, an opportunity must be given to the civil revision petitioners in case they so desire to let in evidence. The said evidence must be concluded by 16.08.2024. In any event, the judgment must be pronounced by



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the court on or before 02.09.2024 and report of compliance is to be submitted

before this court on 03.09.2024

19. With the above directions, this civil revision petition is dismissed.

No costs. Consequently, the connected miscellaneous petition is closed.

20. Post the matter for reporting compliance on 03.09.2024.

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order

To

The XXIII Metropolitan Magistrate Court, Saidapet, Chennai



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V.LAKSHMINARAYANAN, J.

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