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CrI.O.P.No.10861 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.O.P.No.10861 of 2024
& CrI.M.P.Nos.7425 & 7426 of 2024

1.N.Umpathy.
2. Chandra.

... Petitioners/Respondents

/versus/

Malini.

... Respondent/Petitioner

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records pertaining to impugned proceedings in S.T.C.No.437 of 2022 in CrI.M.P.No.2837 of 2022 in D.V.No.07 of 2022 on the file of the Learned Judicial Magistrate-II, Poonamallee, Thiruvallur District and quash the same.

For Petitioners : Mr.V.Purushothaman Reddy

For Respondent : Mr.V.Ashwin Kumar,
for Ms.C.Harini.



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ORDER

This Criminal Original Petition is filed to quash the proceedings in S.T.C.No.437 of 2022 in Crl.M.P.No.2837 of 2022 in D.V.No.7 of 2022 on the file of Judicial Magistrate-II, Poonamallee.

2. The brief facts of the case is that the 1st petitioner herein is the husband of the respondent. The 2nd petitioner is the mother in law. The marriage between 1st petitioner and respondent was solemnized on 17.09.2015 at Chennai. A child was born to them on 12.09.2018. The 1st petitioner is a Non-resident Indian residing in Canada. After marriage, for sometime the spouse lived in Canada and thereafter, the respondent along with the minor child has moved to India. Meanwhile, it appears that the Provincial Court of Alberta, Edmonton, Canada had passed custody order in respect of the child on 12.08.2021. In the said application, the respondent has initiated D.V.C.No.7/2022 seeking residential order and return of Stridhana articles. On 09.09.2022, the Judicial Magistrate-II, Poonamallee in C.M.P.No.2837 of 2022 filed under Section 19 & 23(2) of the Domestic Violence Act, ordered granting protection order restraining the petitioners herein from harassing the respondent

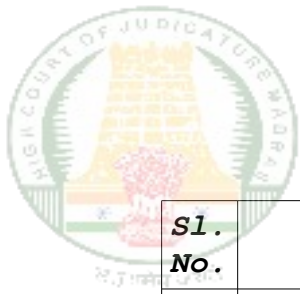


and also granted residential order. Since this order not been complied and breached, the application under Section 31 of Domestic Violence Act filed.

The Judicial Magistrate has taken cognizance of the offence and ordered notice and thereafter, ordered to break open the premises and it is now reported that the respondent is presently residing in the premises bearing Door No.4/987, 4th Block, Mogapair West, Chennai-37.

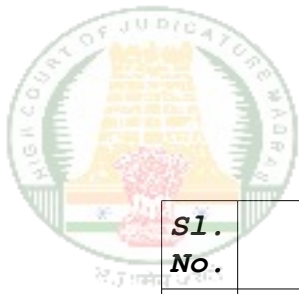
3. The petitioners are aggrieved by the said order, narrating multiple litigations between the parties, both in India and Canada submitted that, the premises which is now been permitted to occupy by the respondent is the property of the 2nd petitioner and it cannot be construed as a share household. Further, it is also contended that Non-Bailable Warrant issued against the petitioners even without proper notice in D.V.C and S.T.C, had caused great prejudice to the petitioners in defending the applications.

4. The following nine cases been listed in the petition to show that the parties are at loggerheads before different forum for various relief and the present relief granted to the respondent herein is unwarranted.



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Sl. No.	Parties		Case Details	Court	Relief
1.	Umapathy	Malini	No.4803:197058	Queen's Bench of Alberta, Edmonton at Canada	Divorce by Cruelty
2.	Umapathy	Malini	FF803018329	Queen's Bench of Alberta, Edmonton at Canada	Custody of Son
3.	Malini	Umapathy Chandra	D.V.C.No.7/2022	Judicial Magistrate-II, Poonamallee	Shared Residence order & return of Stridhanan
4.	Malini	Umapathy	O.S.No.343/2022	Sub-Court, Poonamallee	Injunction restraining the respondent in conducting Divorce petition in Canada
5.	Chandra	Malini	DVC.No.48/2022	Judicial Magistrate, Ambattur	Protection Order
6.	Malini	Umapathy	MC.No.23/2022	Judicial Magistrate-II, Ambattur	Maintenance
7.	Umapathy	Malini	G.W.O.P.No.117/2023	Principal District and Sessions Court, Tiruvallur	Custody of Soon
8.	Chandra	Malini	CRP.No.2477/2023	High Court, Madras.	Set-aside interim residence order passed by JM-II, Poonamallee



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Sl. No.	Parties		Case Details	Court	Relief
9.	Chandra	Malini	CrI.O.P.No.	High Court, Madras.	To quash the proceedings in D.V.No.22/2022

5. Per contra, the Learned Counsel for the respondent submitted that for the purchase of the residence which is the subject matter, the respondent has transferred nearly Rs.18,50,000/- to the account of the 2nd respondent and therefore, it could not be claimed that it is not shared residence. Further, he would also submit that before leaving to Canada, the 1st petitioner and the respondent lived in the said premises which also will attract the definition of shared residence.

6. From the arguments and record, this Court finds that the respondent herein is now in India. Whereas, her husband/the 1st petitioner herein being a Non-Resident Indian, he is residing at Canada along with her mother/the 2nd petitioner. The matter is litigated through Counsels and the matter of this nature cannot be agitated through proxy or through Counsels. If the petitioners are really interested in settling the dispute, their appearance before the Court or through Mediation is necessary. As far as the order of the



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Judicial Magistrate which is impugned in this petition, this Court finds no error or illegality. If at all, the petitioners are really interested to settle the matter as stated above, they have to appear in person before the Judicial Magistrate and work out their remedy. If they make any such attempt, the Judicial Magistrate shall take note of it and kept the execution of NBW in abeyance and facilitate the parties to settle the dispute amicably.

7. With the observation, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed.

12.07.2024

Index : Yes/No.
Interest : Yes/No.
Speaking Order/Non-speaking order
bsm

To:-

1. The Judicial Magistrate-II, Poonamallee, Thiruvallur District.



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Dr.G.JAYACHANDRAN, J.

bsm

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