



WEB COPY



C.R.P.No.2164 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE P. DHANABAL

C.R.P.No.2164 of 2022

and

C.M.P.No.11225 of 2022

P.Hemakumar

... Petitioner

vs.

P.Meena

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to strike off the petition in D.V.C.No.06 of 2022 and its cognizance pending on the file of the Judicial Magistrate, Ambattur.

For Petitioner : Mr.P.G.Thiyagu

For Respondent : Mr.R.Muthukumar

ORDER

This Civil Revision Petition has been filed by the petitioner as against taking cognizance in D.V.C.No.06 of 2022 on the file of the Judicial Magistrate, Ambattur, Chennai.



C.R.P.No.2164 of 2022

2. According to the petitioner the respondent herein has filed a petition before the Trial Court for the relief under Section 18, 19, 20 and 22 of Protection of Women from Domestic Violence Act, 2005. But, the trial Court failed to consider that there are no materials to proceed as against this petitioner and the complaint lodged by the respondent herein and the prayer sought for by this respondent has been limited for grant of maintenance and compensation and there is no necessity to insisting or invoking other provisions for the sake of filing of the case under Sections 18,19,20 and 22 of Protection of Women from Domestic Violence Act, 2005. The Trial Court failed to apply its mind while taking the said case on file and without any prima facie material issued notice to this petitioner. Therefore, the order passed by the Trial Court in taking cognizance is not in accordance with law and the petition is to be struck off.

3. The learned Counsel appearing for the petitioner would contend that the respondent has filed a petition before the Trial Court under the Protection of Women from Domestic Violence Act, 2005. But, there is no specific allegations and there is no any materials to attract the provision and to take cognizance as against this petitioner under Protection of Women from



C.R.P.No.2164 of 2022

Domestic Violence Act, 2005, without applying the mind, the trial Court has issued summon to the petitioner. Therefore, the order passed by the Trial Court is not in accordance with law and thereby the D.V.C proceedings is liable to be struck off.

4. The learned Counsel appearing for the Respondent would contend that the respondent has stated about the facts and categorically pleaded about the incidents to take cognizance against the petitioner. The trial Court after taking into consideration of the allegations levelled in the main petition, has taken the case on file and issued summon to the petitioner. Therefore, the order passed by the Trial Court is in accordance with law and the present Civil Revision petition is liable to be dismissed.

5. This Court heard both sides and perused the records.

6. The main contention of the petitioner is that the trial Court has not passed elaborate order for taking cognizance and there are no prima facie materials available to proceed the case as against the petitioner. This Court also perused the records and observed that the trial Court has issued notice and



the petitioner also appeared, now the said case is posted for cross-examination of evidence. As far as entertaining the application under section 12 of Domestic Violence Act is concerned, already the Full Bench of this Court has settled that the maintainability of the petition can be decided by the concerned Magistrate as preliminary issue. Therefore, the petitioner can very well approach the trial Court. But, he straight away filed the petition under Article 227 of Constitution of India. At this juncture, it is relevant to extract the relevant portion of the Full Bench judgment of this Court in the case of ***Arul Daniel and others vs Suganya*** in ***Crl.O.P.SR.Nos.31852 of 2022 etc., batch cases.***

"76. Before bringing the curtains down, for the sake of convenience and clarity, we reiterate the following directions passed by the learned single judge in Pathmanathan, supra, which shall now govern the disposal of applications under the D.V.Act.

vi. It is not mandatory for the Magistrate to issue notices to all parties arrayed as respondents in an application under Section 12 of the Act. As pointed out by this Court in Vijaya Baskar (cited supra), there should be some application of mind on the part of the Magistrate in deciding the respondents upon whom notices should be issued. In all cases involving relatives and other third parties to the matrimonial relationship, the Magistrate must set out reasons that



C.R.P.No.2164 of 2022

have impelled them to issue notice to such parties. To a large extent, this would curtail the pernicious practice of roping in all and sundry into the proceedings before the Magistrate.

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 vs Roopial 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.Vijyalekshmi Amma Vs 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."



C.R.P.No.2164 of 2022

WEB COPY

7. Therefore, as stated above the Hon'ble Full Bench of this Court already settled that it would be open to an aggrieved respondent(s) to approach the Magistrate and raise the issue of maintainability and other preliminary 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. 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. Therefore, the petitioner can very well approach the concerned Magistrate as per the law laid down by the Full Bench of this Court. Without approaching the Magistrate Court, the petitioner straight away filed this Civil Revision Petition. Therefore, this Civil Revision Petition cannot be entertain and the petitioner is at liberty to approach the concerned Magistrate, as per the decision of the Full Bench of this Court.



C.R.P.No.2164 of 2022

8. In view of the above observation, this Civil Revision Petition is lack of merits and liable to be dismissed. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

gvn

26.07.2024

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

To:

1.The Judicial Magistrate, Ambattur

2.The Section Officer,
V.R.Section,
High Court of Madras.



WEB COPY



C.R.P.No.2164 of 2022

P. DHANABAL, J.

gvn

C.R.P.No.2164 of 2022

26.07.2024