



WEB COPY



C.R.P.(PD).No.2885 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2885 of 2021
and C.M.P.No.20823 of 2021

1.C.Sivaraj

2.S.Chandirasekaran

3.C.Thaarakeswari

... Petitioners

VS

Sheela

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to call for the records leading to the initiation of D.V.C.No.3 of 2021 on the file of Judicial Magistrate No.1, Kallakurichi and quash the same.

For Petitioners : Mr.A.Tamilvanan

For Respondent : Mr.B.Mohan

ORDER

The Civil Revision Petition is filed challenging the initiation of proceedings under Domestic Violence Act in DVC.No.3 of 2021 on the file of Judicial Magistrate No.I, Kallakurichi.

2. The learned counsel appearing for the petitioners submits that the 1st



C.R.P.(PD).No.2885 of 2021

petitioner already filed a petition for divorce on the ground of cruelty in H.M.O.P.No.106 of 2018 on the file of Sub Court, Kallakurichi and nearly 3 years thereafter, the present complaint has been laid by the respondent with false allegations.

3. The Full Bench of this Court in **Arul Daniel vs. Suganya** reported in **(2022) 4 MLJ (Crl) 561**, while considering the question relating to the maintainability of the revision against the proceedings initiated under the Domestic Violence Act, has 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 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



C.R.P.(PD).No.2885 of 2021

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 the above mentioned case, this Court is inclined to dispose of the Civil Revision Petition with liberty to the petitioner to move the concerned Magistrate, raising all objections with regard to the maintainability as well as preliminary issues.

5. With this liberty, the Civil Revision Petition is disposed of. No costs. Consequently, the connected civil miscellaneous petition is closed.

08.01.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm



WEB COPY

To

The Judicial Magistrate No.1,
Kallakurichi.



C.R.P.(PD).No.2885 of 2021

S.SOUNTHAR, J.

dm

C.R.P.(PD).No.2885 of 2021

08.01.2024