



C.R.P.No.1115 of 2024.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.1115 of 2024

and

C.M.P.No.5788 & 5791 of 2024

1.Mr.Yogesh Guruparan
2.Mrs.Lakshmi Bai
3.Mr.D.Srinivasan

... Petitioners

Vs.

Mrs.K.Lakshmi Madhuri
...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to strike off the proceedings in D.V.C.No.49 of 2023 before the learned Metropolitan Magistrate and Additional Mahila Court at Egmore, Chennai.

For Petitioners

:M/s.A.Ramesh Manikandan



ORDER

The Civil Revision Petition is filed seeking to strike off the proceedings initiated by the respondent under Domestic Violence Act in D.V.C.No. 49 of 2023 .

2. It is the case of the petitioners that the relationship between the 1st petitioner and the respondent got strained and the respondent filed a petition for divorce against the 1st petitioner in H.M.O.P.No.5330 of 2019 on the file of VII Additional Family Court, Chennai and the same is pending. The 1st petitioner filed a petition for restitution of conjugal rights against the respondent in H.M.O.P.No.344 of 2021 and the same is also pending. Thereafter, by way of after thought, the respondent preferred a complaint in D.V.C.No.49 of 2023 in the year 2023.

3. The learned counsel for the petitioner submits that proceedings initiated by the respondent under Domestic Violence Act is only an after thought and the same is abuse of process of law.



4. The Full Bench of this Court in the case of **Arul Daniel vs. Suganya** reported in **(2022) 4 MLJ (Crl) 561**, while considering the maintainability of the Civil Revision Petition under Article 227 of Constitution of India challenging the initiation of proceedings under Domestic Violence Act 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 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



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Section 12 of the D.V Act, at the threshold before this Court under Article 227 of the Constitution.”

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5. In view of the law laid down by the Full Bench of this Court in the above mentioned case law, this Civil Revision Petition is dismissed with liberty to the petitioners to appear before the concerned Magistrate and raise all jurisdictional and maintainability issues. No costs. Consequently, the connected civil miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes / No
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To
The Metropolitan Magistrate and Additional Mahila Court, Egmore, Chennai.



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S.SOUNTHAR, J.

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