



C.R.P.(PD).No.2675 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2675 of 2021

and

C.M.P.No.19724 of 2021

1.T.Murugesan

2.Vasanth

3.Parameshwari

4.Saraswathi

... Petitioners

VS

1.Jayakodi

2.Rupasri

3.Hemnath

... Respondents

(Respondents 2 and 3 minors represented by 1st respondent)

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to call for the records in relation to the D.VC.No. 33 of 2020 on the file of the Learned Additional Mahila Court, Vellore and quash the same.



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For Petitioners : Mr.M.R.Thangavel

For R1 : No Appearance

For R2 and R3 : No Appearance

ORDER

The Civil Revision Petition is filed challenging the proceedings initiated against the petitioners under Domestic Violence Act in DVC No.33 of 2020 on the file of Judicial Magistrate (Additional Mahila Court), Vellore.

2. The petitioners herein seeks quashing of the proceedings initiated under Domestic Violence Act mainly on the ground that a civil suit is pending between the 1st petitioner and his son Elango, who is the husband of the 1st respondent and father of the respondents 2 and 3. It was mainly contended by the learned counsel for the petitioners that when civil suit is pending between the 1st petitioner and husband of the 1st respondent and father of other respondents, the domestic violence complaint preferred by the 1st respondent is only at the instigation of her husband and the same is abuse of process of the Court.

3. As per the law laid down by the Full Bench of this Court in *Arul*



Daniel vs. Suganya reported in **(2022) 4 MLJ (Crl) 561**, the party aggrieved

by the notice issued by the Magistrate should appear before the concerned Magistrate and raise all his objections regarding maintainability and other preliminary issues. In the said decision, the Full Bench of this Court while considering the remedy available to the aggrieved person in domestic violence cases against whom proceedings were initiated 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 Section 12 of the D.V Act, at



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the threshold before this Court under Article 227 of the Constitution.”

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4. In view of the law laid down by the Full Bench of this Court in the above said decision, the petitioners are granted liberty to approach concerned Magistrate and raise their objections regarding maintainability and also other preliminary objections. The petitioners are entitled to raise all points raised in this revision before the concerned Magistrate.

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

05.01.2024

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



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To

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The Additional Mahila Court,
Vellore.



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S.SOUNTHAR, J.

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