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C.R.P.No.2981 of 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 11.01.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**CRP.No.2981 of 2021 and**  
**C.M.P.No.21285 of 2021**

A.Vijaya Kumar

... Petitioner

Vs.

1.K.Girija  
2.V.Partheeban  
Renuka(died)

...Respondents

**PRAYER:** Civil Revision Petition filed under Article 227 of Constitution of India, praying to call for the records and quash the complaint filed in D.V.C.No.650 of 2019 pending on the file of the Hon'ble Special Court for Prevention of Women from Domestic Violence Act at Coimbatore.

For Petitioner : M/s.N.Umapathi

For Respondent 1 :M/s.Deepan Uday

For respondent 2 :Left



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## **ORDER**

The Civil Revision Petition is filed challenging the initiation of proceedings under Section 12 of Prevention of Women from Domestic Violence Act. The complaint preferred by the 1<sup>st</sup> respondent in DVC.No.650 of 2019 on the file of the learned Special Court for Prevention of Women from Domestic Violence Act, Coimbatore is challenged on the ground that said complaint has been preferred after receipt of notice in the petition for divorce filed by the 2<sup>nd</sup> respondent/husband. Therefore, it is the contention of the petitioner that the complaint filed by the 1<sup>st</sup> respondent is sheer abuse of process of law.

2. 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:-

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

3. In view of the law setted by the Full Bench of this Court in *Arul Daniel vs. Suganya* reported in (2022) 4 MLJ (Crl) 561, the petitioner is at



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liberty to move the concerned Magistrate and raise issue of maintainability and other preliminary issues. The petitioner is granted liberty to raise all the points raised by him in this revision before the Magistrate.

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

**11.01.2024**

Index : Yes / No  
Internet : Yes / No  
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To

The Special Court for Prevention of Women from Domestic Violence Act  
Coimbatore.



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**S.SOUNTHAR, J.**

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**11.01.2024**