



C.R.P.(MD)No.1178 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 17.10.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.2118 of 2024

and

C.M.P.(MD)No.12082 of 2024

S.Achiyappan

... Petitioner / 7th Respondent

Vs.

1.B.Aparna

... 1st Respondent / Petitioner

2.A.Kathiravan

3.A.Premavathi

4.A.Sathya

5.Duraisamy

6.Ranjini

7.Jeyakumar

... Respondents 2 to 7 / Respondents 1 to 6

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the complaint petition as against the petitioner herein in D.V.C.No.05 of 2024, on the file of the Judicial Magistrate Court, Lalgudi, and allow the civil revision petition.

For Petitioner : Mr.N.Ananda Kumar

For Respondents : Mr.T.Leninkumar for R1
No appearance for R2 & R3.

* * *



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ORDER

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Heard the learned counsel for the revision petitioner and the learned counsel for the first respondent.

2.Marriage took place between A.Kathiravan and B.Aparna (complainant) on 10.02.2019 at Lalgudi as per Hindu rites and customs. The relationship between the parties came under strain. The wife filed D.V.C.No.5 of 2024 on the file of the Judicial Magistrate, Lalgudi seeking various reliefs under the provisions of the Protection of Women from Domestic Violence Act, 2005. The petitioner who is a practising advocate and who is the paternal uncle of the complainant's husband is shown as the seventh accused in the complaint. To quash the same, this civil revision petition has been filed.

3.The learned counsel for the revision petitioner reiterated all the contentions set out in the memorandum of the grounds of this civil revision petition. He pointed out that the petitioner was the paternal uncle of the complainant's husband and that he was never a part of the “shared household”. In other words, according to the petitioner, the complainant was never in a domestic relationship with the revision petitioner and hence would not be a “respondent” within the meaning of the Protection of Women from Domestic



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Violence Act, 2005. He relied on the decision of the High Court of Orissa made in **CRLMC No.597 of 2022 dated 15.05.2023 (*Durga Das Panigrahi vs Sweta Mishra*)** in support of his contentions and called upon this Court to quash the impugned complaint as far as he is concerned.

4.Per contra, the learned counsel for the first respondent / complainant relied on the order dated **09.11.2023** made in **C.R.P.(MD)No.2950 of 2023 (vide *Tamilarasan vs Shobika Devi*)** and contended that the petitioner can very well workout his rights and remedies before the trial magistrate. He submitted that the present civil revision petition filed under Article 227 of the Constitution of India is itself not maintainable.

5.I carefully considered the rival contentions and went through the materials on record.

6.The Hon'ble Full Bench in the decision reported in **2022 (6) CTC 833 (*Arun Daniel Vs. Suganya*)** laid down directions that will govern the disposal of applications under the D.V. Act. It was held that the jurisdiction under Article 227 of the Constitution of India will not be exercised as a measure of self-imposed restriction by bypassing the statutory remedy under the Protection



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of Women from Domestic Violence Act, 2005. However the Hon'ble Full Bench upheld the maintainability of the petition under Article 227 of the Constitution of India when the proceedings before the Magistrate are shown to suffer from a patent lack of jurisdiction. The relevant paras read as follows:

“76.xiv. A petition under Article 227 of the Constitution may still be maintainable if it is shown that the proceedings before the Magistrate suffer from a patent lack of jurisdiction. The jurisdiction under Article 227 is one of superintendence and is visitorial in nature and will not be exercised unless there exists a clear jurisdictional error and that manifest or substantial injustice would be caused if the power is not exercised in favour of the petitioner. (See *Abdul Razak V. Mangesh Rajaram Wagle (2010) 2 SCC 432, Virudhunagar Hindu Nadargal Dharma Paribalana Sabai V. Tuticorin Educational Society (2019) 9 SCC 538*)).”

7. Thus I am of the view that the Court need not always shut its eyes where the lack of jurisdiction is so apparent on the face of it and when the Court is satisfied that manifest or substantial injustice would be caused if the power is not exercised in favour of the petitioner. Though the extraordinary power has to be sparingly and cautiously exercised, there cannot be a total ouster of the jurisdiction under Article 227 of the Constitution of India. The



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petitioner herein is a practising advocate. He is admittedly a relative of the complainant's husband and has not at any time resided together with the complainant in a shared household. In these circumstances, substantial injustice would be caused if I decline to exercise the jurisdiction under Article 227 of the Constitution of India. Therefore I hold that this petition is maintainable.

8.The next question that calls for consideration is whether the petitioner has been in a domestic relationship with the aggrieved person and whether he can be treated as a respondent within the meaning of the Protection of Women from Domestic Violence Act, 2005. The relevant definitions in the Act are as follows:-

Section 2 – Definitions

In this Act, unless the context otherwise requires,

“(a) “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent;

...

(f) “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;”



...

(s) “shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member; irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;

(q) “respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act.”

9. The Hon'ble Supreme Court in the decision reported in **(2021) 1 SCC 414** (vide **Satish Chander Ahuja v. Sneha Ahuja**), noted that there are two conditions for a person to be treated to be respondent within the meaning of Section 2(q) i.e. (i) in a domestic relationship with the aggrieved person, and (ii) against whom the aggrieved person has sought any relief under the 2005 Act. Thus one of the essential conditions for a person to come within the definition of respondent is that the person who is charged with the act of



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domestic violence should be in or should have been in a domestic relationship with the aggrieved person. Admittedly, the revision petitioner has or has never been in a domestic relationship with the aggrieved person. The Hon'ble Supreme Court in **Satish Chander case** held that the definition of Section 2(s) is exhaustive. The relevant paragraph is as follows:

“In the above definition, two expressions, namely, “aggrieved person” and “respondent” have occurred. From the above definition, the following is clear : (i) it is not requirement of law that aggrieved person may either own the premises jointly or singly or by tenanting it jointly or singly; (ii) the household may belong to a joint family of which the respondent is a member irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household; and (iii) the shared household may either be owned or tenanted by the respondent singly or jointly.”

One can claim that there was domestic relationship only if the parties had lived together in a shared household. In this case, it is not the case of the complainant that the revision petitioner had any time lived as a part of the shared household.

10. In the decision relied upon by the learned counsel for the first respondent (ie.) **Tamilarasan Vs. Shobika Devi in C.R.P.(MD)No.2950 of**



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2023 vide order dated 09.11.2023), the learned Single Judge declined to exercise jurisdiction under Article 227 of the Constitution owing to the specific facts and circumstances of the said case. As far as the principle is concerned, he had held as follows:

“8. Despite specific directions of the Hon'ble Supreme Court as well as of this Court, the practise of taking the petition filed under the Domestic Violence Act against all the respondents therein mechanically by the Judicial Magistrates is on rise. Nowadays, a party, who filed a petition under the Domestic Violence Act, has been impleading not only the parents of her husband, but all her in-laws, who were residing at far off places and in some cases, relatives and friends of her husband with sole intention to compel her husband to come to terms and to harass the relatives of her husband and in such a situation, the Magistrates are duty bound to consider the petition at the initial stage itself and take the petition on file against only those persons whose presence before it is proper and necessary for granting the reliefs under Chapter IV of the Domestic Violence Act”.

11.The Magistrate ought to have verified if there is any averment indicating that the respondents are part of the shared household. When there is no such averment, cognizance ought not to have been taken against all the



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respondents. The complainant should have been directed to delete those respondents who are not part of the shared household. Since such an exercise was not undertaken in this case by the Court below, and considering the facts and circumstances of this case, I am constrained to exercise my jurisdiction under Article 227 of the Constitution of India as refusal to exercise the jurisdiction would cause substantial injustice to the Petitioner who is a practising advocate with a good standing in the Bar.

12.The revision petitioner through his counsel gives a solemn undertaking before this Court that he will completely keep off from the dispute between the complainant on the one hand and her in-laws.

13.In this view of the matter, the impugned complaint is quashed as far as the petitioner is concerned. The Court below is directed to dispose of D.V.C. No.5 of 2024 on merits and in accordance with law within a period of three months from the next hearing date. The civil revision petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

17.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

The Judicial Magistrate Court,
Lalgudi.



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G.R.SWAMINATHAN, J.

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