



C.R.P.(MD)No.2762 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.12.2023

Pronounced on : 06.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2762 of 2023

and

C.M.P.(MD)No.14372 of 2023

1. K.Dharmarajan

2. D.Chellammal

3. Nathiya

4. Baviya

... Petitioners/
Petitioners/
Respondents 2 to 5

Vs.

Divya

... Respondent/
Respondent/
Complainant

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed in CrI.M.P.No.604 of 2023 in D.V.C.No.7 of 2022 dated 20.07.2023 on the file of the District Munsif cum Judicial Magistrate, Singampunari, by allowing this revision.



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For Petitioners : Mr.A.Ganesan

For Respondent : Mr.S.Mahesh Babu

ORDER

The Civil Revision Petition is directed against the order passed in Crl.M.P.No.604 of 2023 in D.V.C.No.7 of 2022 dated 20.07.2023 on the file of the District Munsif cum Judicial Magistrate Court, Singampunari, dismissing the petition filed under Order 1 Rule 10(2) of the Code of Civil Procedure.

2. The respondent as complainant has filed a petition under Section 12 of Protection of Women from Domestic Violence Act claiming the reliefs under Sections 18, 19, 20 and 22 of the said Act against her husband and in-laws/revision petitioners herein and the same was taken on file in D.V.C.No.7 of 2022 and the same is pending on the file of the District Munsif cum Judicial Magistrate Court, Singampunari.

3. It is not in dispute that the marriage between the respondent and one Anand was solemnized on 18.10.2020. Admittedly, the revision



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petitioners 1 and 2 are the parents and the revision petitioners 3 and 4 are the sisters of the said Anand, husband of the respondent.

4. The revision petitioners/respondents 2 to 5 in the D.V.C. complaint have filed a revision earlier in C.R.P.(PD)(MD)No.239 of 2023 invoking Article 227 of the Constitution of India seeking orders to strike off the complaint in D.V.C.No.7 of 2022 on the file of the Court of the Judicial Magistrate, Singampunari and a learned Judge of this Court, vide order dated 02.02.2023, has disposed of the revision in the following terms:

“(i) If the petitioners are having any grievance that they have been unnecessarily added as parties to the proceedings, it is open to them to file an application before the learned Magistrate to delete their names and if any such application is filed, the learned Magistrate shall decide the same, as per the decision of the Hon'ble Supreme Court in Kunapareddy v. Kunapareddy Swarna Kumari, reported in (2016) 11 SCC 774.

(ii) If the petitioners are represented through a counsel, the learned Magistrate shall not insist on the personal appearance of the petitioners. However, the petitioners shall appear before the Court as and when their presence is required by the Court.



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(iii) The learned Magistrate is directed to dispose of D.V.C.No.7 of 2022 as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order.”

5. In pursuance of the direction of this Court, the revision petitioners have filed a petition under Order 1 Rule 10(2) C.P.C. in Crl.M.P.No.604 of 2023 seeking orders to discharge them from the alleged offences punishable under Sections 12, 18(a), 18(e), 19(8), 20 and 22 of the Domestic Violence Act. The respondent has filed a counter statement raising serious objections. The learned Judicial Magistrate, after enquiry, has passed the impugned order dated 20.07.2023 dismissing the said petition. Aggrieved by the order of dismissal, the present revision came to be filed.

6. The revision petitioners, in their affidavit filed in support of the petition under Order 1 Rule 10(2) C.P.C., have stated that the respondent has raised full of imaginary fairy tale stories while suppressing the real facts, that the respondent has raised false and frivolous allegations against the revision petitioners, that the respondent's husband Anand has been



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working in Canada, that the said Anand having intention to live with the respondent has filed a petition claiming restitution of conjugal rights and the same is pending in H.M.O.P.No.166 of 2022 on the file of the Subordinate Court, Melur, that the respondent's earlier complaints given to the police were closed as there were no merits, that the respondent's father had instigated the husbands of the revision petitioners 3 and 4, who in turn sent their wives to their parents home, that all of them colluded against the revision petitioners to portrait them badly and scandalize in their locality, that the husbands of the revision petitioners 3 and 4 have filed divorce petitions in H.M.O.P.Nos.113 and 114 of 2021 respectively on the same day, that the respondent has filed the above complaint and another complaints with sole intention to harass the revision petitioners and to grab money from them and that since the revision petitioners were added in the D.V.C. complaint without any basis, they were constrained to file the above petition to drop them from the complaint.

7. The respondent has filed the counter statement reiterating the averments raised in the main complaint and further stated that the respondent was treated as a slave and a money generating machine, that



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though her husband had agreed to take her to Canada immediately, at the instigation of his parents he had not taken any steps to get Visa and take her to Canada, that the revision petitioners had been demanding more and more dowry and they had also abused the respondent in filthy language and tortured her, that the allegation that the respondent's father colluded with the husbands of the revision petitioners 3 and 4 and forced them to take action against the revision petitioners 3 and 4 is imaginary, that both the revision petitioners 3 and 4 were always adamant in their matrimonial home and quarreled with their husband's family, that the third revision petitioner had obtained divorce from her first husband and married one Vijay, that the second husband has now filed the divorce petition and the same is pending on the file of the Subordinate Court, Melur, that the fourth revision petitioner's husband has also filed two petitions earlier and the same were later compromised, that subsequently he filed another divorce petition in H.M.O.P.No.113 of 2021 and the same is pending on the file of the Subordinate Court, Melur and that since the respondent has narrated the incidents and the way in which she was harassed and tortured by the revision petitioners, the question of discharging or dropping them does not arise.



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8. At this juncture, it is necessary to refer the order of this Court in the case of ***Felix Jerome and others Vs. Arockiya Preethy and another reported in 2023 5 L.W. 144*** relied on by the learned counsel appearing for the respondent and the relevant passages are extracted hereunder;

“9. It is necessary to refer the direction passed by the learned Judge of this Court in Dr.P.Pathmanathan Vs. V.Monica reported in 2021 1 MLJ (Cri) 311, which was reiterated by the Hon'ble Full Bench in Arul Daniel's case above referred,

“76 Before bringing the curtains down, for the sake of convenience and clarity, we reiterate the following directions passed by the learned single in Pathmanathan, supra, which shall now govern the disposal of applications under the D.V. Act:

.....

x. The Magistrates must take note that the practice of mechanically issuing notices to the respondents named in the application has been deprecated by this Court nearly a decade ago in Vijaya Baskar (cited supra). Precedents are meant to be followed and not forgotten, and the Magistrates would, therefore, do well to examine the applications at the



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threshold and confine the inquiry only to those persons whose presence before it is proper and necessary for the grant of reliefs under Chapter IV of the D.V. Act.”

10. 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. Since the petitioner, who filed the 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 place 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. If a Magistrate issues notice to all the respondents without properly considering the application filed under the Domestic Violence Act, that by itself is not a ground to approach this Court invoking Article 227 of the Constitution of India for quashing or striking the petition filed under the Domestic Violence Act.



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11. It is necessary to refer the direction No.vii passed by the learned Judge in Pathmanathan's case, which was reiterated by the Hon'ble Full Bench,

“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,



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

12. Considering the above, the petitioners are entitled to approach the concerned Magistrate Court itself and raise the issue of maintainability and other preliminary issues and if such an application is filed, the learned Magistrate shall decide the same as per the decision of the Hon'ble Supreme Court in Kunapareddy @ Nookala Shanka Balaji Vs. Kunapareddy Swarna Kumari and another reported in (2016) 11 SCC 774.”

9. Considering the above, the filing of the petition by the revision petitioners for dropping or discharging them from the main case cannot be found fault with. But at the same time, just because they have filed the above petition in pursuance of the direction of this Court, it cannot be stated that they are entitled to be discharged from the case.

10. The learned Magistrate, after referring to the contentions raised by both the parties and also taking note of the contention raised in the main D.V.C. complaint and the counter filed by the revision petitioners, by observing that the pleadings would reveal the act of domestic violence of



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the revision petitioners and that full fledged trial would alone determine whether the revision petitioners have done any domestic violence against the respondent, dismissed the petition.

11. As rightly observed by the learned Magistrate, a cursory perusal of the main complaint in D.V.C.No.7 of 2022 would reveal the allegations and the charges levelled against the revision petitioners. The respondent has raised specific allegation against the first revision petitioner, who is her father-in-law that he used to enter bedroom suddenly by only wearing underwear and used to signal in an awkward manner. According to the respondent, the revision petitioners have refused to take her to hospital or give treatment when she was suffering severely by stomach ache during Karthigai festival in the year 2020.

12. It is not in dispute that on the basis of the complaint lodged by the respondent, FIR came to be registered in Crime No.6 of 2022 for the offences punishable under Sections 498A, 342 and 506(1) IPC and Sections 4 and 6 of Dowry Prohibition Act. The respondent has also raised the complaint that all the sridhana properties are still in the custody of the



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revision petitioners including the cash amount, which was given by her parents as dowry at the time of marriage. It is the further complaint of the respondent that though locker key is available with the respondent, the revision petitioners have fabricated duplicate key for the locker.

13. As rightly pointed out by the learned counsel appearing for the respondent, it is pertinent to note that the revision petitioners, in their petition, have specifically stated that the respondent and her father colluded with the husbands of the revision petitioners 3 and 4 and instigated them to send their wives out of matrimonial homes and also to file divorce petitions. So even according to the revision petitioners, the revision petitioners 3 and 4 were in the house of the revision petitioners 1 and 2 at the relevant point of time and that divorce petitions were pending against them.

14. The Hon'ble Supreme Court, in the case of ***Kahkashan Kausar @ Sonam and others Vs. The State Of Bihar and others*** in ***Crl.A.No.195 of 2022 dated 08.02.2022***, while dealing with quashing of a criminal case filed under Section 498A IPC, has observed that the tendency of



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implicating husband and all his immediate relations by the wife is not uncommon and that the allegations of harassment of husband's close relatives, who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion and the allegations of the complaint are required to be scrutinized with great care and circumspection. In case, if the allegations raised by the respondent against the revision petitioners are general and omnibus in nature, the Courts can very well discharge or drop them from the main case, but if there are serious allegations and charges, the Courts cannot go into truth or otherwise of allegations made in the complaint or delve with the disputed question of facts in the petition for dropping or discharging the revision petitioners.

15. Considering the above, the impugned order dismissing the petition filed under Order 1 Rule 10(2) C.P.C. cannot be found fault with. Hence, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

16. As already pointed out, the learned Judge of this Court, while disposing the revision filed by the revision petitioners in C.R.P.(PD)



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(MD)No.239 of 2023, has directed the learned Magistrate to dispose of D.V.C.No.7 of 2022 as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of that order. Since the complaint in D.V.C.No.7 of 2022 is pending for more than 15 months, the learned District Munsif cum Judicial Magistrate, Singampunari, is hereby directed to proceed with the trial in D.V.C.No.7 of 2022 and dispose of the same within a period of two months from the date of receipt of a copy of this order.

17. With the above direction, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

06.03.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm



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1. The District Munsif cum Judicial Magistrate,
Singampunari.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.R.P.(MD)No.2762 of 2023
and
C.M.P.(MD)No.14372 of 2023

Dated : 06.03.2024