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C.R.P.(MD)No.3080 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 27/03/2024

Date of Pronounced : 04/04/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.3080 of 2023

and

CMP (MD) No.15892 of 2023

1.Kader Batcha
2.Zuneitha Begum : Petitioners/Respondents

Vs.

1.Firose Banu
2.Minor Ahamed Aayan : Respondents/Petitioners
(Represented through his
mother and guardian the
first respondent)

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for records relating to the petition under Domestic Violence Act in DV No.36 of 2023 on the file of the Judicial Magistrate, Additional Mahila Court, Madurai and strike off the same so far as the petitioners/respondents are concerned and pass such other further orders.

For Petitioners : Mr.J.Barathan

For Respondents : Mr.C.Gangai Amaran



C.R.P.(MD)No.3080 of 2023

O R D E R

WEB COPY This civil revision petition has been filed seeking to strike off the case in DV No.36 of 2023 on the file of the Judicial Magistrate, Additional Mahila Court, Madurai.

2.Heard both sides.

3.Let me extract the relevant portion of the judgment reported in the case of **Arul Danial Vs. Suganya** (2022 (3) MWN (CR.) 539 (FB)) :-

"7.The Division Bench, in *P.Ganesan*, supra, has categorically and correctly restated the legal position, in two places that the proceedings under the *D.V. Act* are civil in nature. For the sake of convenience, we are extracting those portions from *P. Ganesan*, supra.

"15 (o) To sum up:

(i) As we have already held that the proceedings under the *Domestic Violence Act* are civil in nature.....



WEB COPY



C.R.P.(MD)No.3080 of 2023

16 (c) We have already held that the proceedings under *Chapter IV of the Domestic Violence Act* are civil in nature....."

8.We concur with the above view of Anand Venkatesh, J., as affirmed by the Division Bench in *P.Ganesan*, supra. However, after saying so, the Division Bench, in *P.Ganesan*, supra, found itself in disagreement with the opinion of Anand Venkatesh, J. that a petition under *Section 482 Cr.P.C.* to quash a D.V. proceedings is not maintainable and has given a contrary opinion which is as under:

"N.Anand Venkatesh, J. held that the Magistrate while adjudicating Civil rights cannot be called Criminal Court. We do not agree with this view of the learned Judge, firstly because the Parliament intended to deliberately confer Jurisdiction on the Criminal Court. An appeal is also provided to the Court of Sessions and not to the District Judge. Secondly, the learned Judge relied upon a number of cases to hold that where the Magistrate is conferred power to grant reliefs of Civil nature he cannot be called to a 'Criminal Court'. We find that



WEB COPY



C.R.P.(MD)No.3080 of 2023

in all the Judgments referred by the learned Judge, the Courts have held that the Magistrate was not a Court when he was exercising Ministerial/Administrative functions and not a criminal Court when he was following the procedure stipulated under the [Special Act](#) which gave his power and not under [Cr.P.C.](#). Therefore, in our view those Judgments cannot be relied upon to hold that the Magistrate is not a criminal Court while dealing with an Application under 12 of the [Domestic Violence Act](#). Just as we found that the nature of reliefs would determine the character of the proceedings we find that the nature of the procedure adopted would determine the character of the Tribunal. There is no doubt that the Magistrate dealing with proceedings under [Domestic Violence Act](#) is a Criminal Court who has to follow the procedure under [Cr.P.C.](#), exception being provided under [Section 28 \(2\)](#) of the Act.” (emphasis supplied)

9.From a reading of the aforesaid, we are able to infer that albeit the fact that D.V. proceedings initiated on



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C.R.P.(MD)No.3080 of 2023

an application under *Section 12* are civil proceedings, the Magistrate is nonetheless a Criminal Court as the procedure he is required to follow is one under the *Code of Criminal Procedure*. To put it more precisely, according to the Division Bench, it is not the substantive law, but the procedural law that determines the character of the Court of the Magistrate. This is where, in our considered opinion, with due respect, the Division Bench appears to have fallen in error."

4. Similarly regarding the appearance of the parties before the trial court, para (iv) may be extracted herein:-

"iv. Personal appearance of the respondent(s) shall not be ordinarily insisted upon, if the parties are effectively represented through a counsel. Form VII of the D.V. Rules, 2006, makes it clear that the parties can appear before the Magistrate either in person or through a duly authorized counsel. In all cases, the personal appearance of relatives and other third



WEB COPY



C.R.P.(MD)No.3080 of 2023

parties to the domestic relationship shall be insisted only upon compelling reasons being shown. (See [Siladitya Basak v. State of West Bengal](#) (2009 SCC OnLine Cal 1903))"

5.In view of the above said directions, the parties are at liberty to approach the concerned trial court itself for dispensing their appearance, of course with the above said limitation.

6.In the light of the above said statement of law, now we will go to the another aspect.

7.As stated in the Full Court Judgement, even though, petition under section 482 of Cr.P.C will not lie, Article 227 of the Constitution of India can be invoked on a specific plea and circumstances.

8.Let me extract the relevant portion:-

"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



WEB COPY



C.R.P.(MD)No.3080 of 2023

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](#)). In normal circumstances, the power under [Article 227](#) will not be exercised, as a measure of self-imposed restriction, in view of the corrective mechanism available to the aggrieved parties before the Magistrate, and then by way of an appeal under [Section 29](#) of the Act."

9. In the light of the statement of law, it is submitted that now this civil revision petition has been filed by the petitioners.



C.R.P.(MD)No.3080 of 2023

10. Now we shall examine as to whether the petitioners satisfied the requirement of law namely;-

(i) whether the cognizance taken by the Judicial Magistrate is illegal, because of the patent lack of jurisdiction;

(ii) Whether there is any error in jurisdiction; and

(iii) Whether there is any manifest or substantial injustice.

11. Now what is meant by jurisdictional error has also been elaborately discussed in the judgment. Let me extract the relevant portions:-

"25. At this juncture, it is necessary to notice that the word "jurisdiction" relates to the power of the Court to decide a class or classes of cases. The import of the expression has been considered by the Supreme Court in **Nusli Neville Wadia Vs. Ivory Properties, 2020(6)SCC 557**, wherein, it was observed as under:-



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C.R.P.(MD)No.3080 of 2023

"The word "jurisdiction" is derived from Latin words "juris" and "dico", meaning "I speak by the law" and does not relate to rights of parties as between each other but to the power of the court. Jurisdiction relates to a class of cases to which a particular case belongs. Jurisdiction is the authority by which a judicial officer takes cognizance and decides the cases. It only presupposes the existence of a duly constituted court having control over subject-matter which comes within classification limits of the law under which court has been established. It should have control over the parties' litigant, control over the parties' territory, it may also relate to pecuniary as well as the nature of the class of cases. Jurisdiction is generally understood as the authority to decide, render a judgment, inquire into the facts, to apply the law, and to pronounce a judgment. When there is the want of general power to act, the court



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C.R.P.(MD)No.3080 of 2023

has no jurisdiction. When the court has the power to inquire into the facts, apply the law, render binding judgment, and enforce it, the court has jurisdiction. Judgment within a jurisdiction has to be immune from collateral attack on the ground of nullity. It has co-relation with the constitutional and statutory power of tribunal or court to hear and determine. It means the power or capacity fundamentally to entertain, hear, and determine.” (emphasis supplied)

26. In view of the above, the power of the Magistrate to entertain and decide an Application under Section 12 and grant one or more reliefs under the D.V. Act is an aspect of his jurisdiction. It is settled law that jurisdiction is an issue that belongs to the realm of substantive law. Procedural law, on the other hand, prescribes the mode and manner in which such jurisdiction is to be exercised. A character of the Court is an essential



C.R.P.(MD)No.3080 of 2023

*aspect of its substantive jurisdiction,
and would depend on the nature or
subject matter of the case before it."*

12. So absolutely, the petitioners cannot say that there is inherent lack of jurisdiction in view of the above said statement of law.

13. Now we will examine as to whether the other ingredients are attracted namely whether there is any manifest or substantial injustice occasioned to the petitioners.

14. In the light of the above said ingredients, we will examine the factual aspects to answer this point.

15. **The complaint is filed by the 1st respondent with the following allegations:-**

The marriage between the husband and wife took place on 06/02/2005 as per their customary rites. After the marriage, they were living in joint family. At that time, the husband was working in Nagercoil. He was visiting during the week ends. Later they put up separate family in 2006 in Dindigul and used to come to



WEB COPY



C.R.P.(MD)No.3080 of 2023

the house in a drunken mood and used to assault her, abused and insulted. Her jewel was also taken by them. She attempted to commit suicide on 15/10/2006. But her life was saved. In 2007, the husband joined job in Dubai. At that time, she was in the parental home and undergoing B.Ed. Education. Later, she went to Dubai along with her husband. She became pregnant, returned to India. A child was born on 11/08/2011. She became pregnant for the second time, but forcibly it was aborted. Later, the husband returned to India. When she was living jointly, the second respondent was also treating her improperly. She was harassed to bring money and jewels. On 10/10/2022 her husband died. On the same day night, she was not permitted to enter into the house. They denied her rights to reside in the matrimonial home. They demanded to return all the jewels, but they refused. So also demanded return of Rs.5,00,000/-, which was given by her to them out of her salary. That was also refused.

16. Seeking quashment of the same, this petition is filed on the ground that these petitioners never were living in the same house along with the de-facto complainant and her husband. During the relevant period of matrimonial issue, they were living separately as admitted by her. Now the petitioners are aged about 81



C.R.P.(MD)No.3080 of 2023

and 71 respectively and the second petitioner, They are affected by various age-old ailments. Since there is no domestic relationship between the petitioners and the complainant, the complaint is liable to be quashed.

17.For which, the learned counsel appearing for the petitioners would submit that even as per the allegations made by the complainant, these petitioners never lived in domestic relationship with them. He would further submit that the initiation of the proceedings itself will amount to *mala fideness* warranting interference of this court under Article 227 of the Constitution of India.

18.So the question, which arises for consideration is whether in the light of the allegations against these petitioners, the complaint is liable to be quashed.

19.Leaving the point of old age of the petitioners, there is specific allegation in the complaint against the petitioners that they also joined in harassing her. At one point of time, taken her jewels and even not permitted to enter into the matrimonial home. So when these allegations are made, simply the husband is no more, the contention that no complaint will lie under the provisions of DV Act cannot be taken into account by this



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court. It is purely a matter for consideration by the trial court. What are all the grievances the petitioners having, they can very well vindicate the same before the trial court itself, by filing appropriate applications.

20.The next question, which arises for consideration is whether the grievance expressed by the petitioners will cause or have occasioned manifest injustice.

21.What is meant by manifest injustice is a term, which is not defined in terms anywhere. We will fall back the definition '**manifest injustice**' made in Black's Law Dictionary runs like this:-

*"**manifest injustice.**A direct, obvious, and observable error in a trial court, such as a defendant's guilty plea that is involuntary or is based on a plea agreement that the prosecution has rescinded."*

22.In the light of the above said definition, when we examine the factual aspects, as mentioned above, now again, it is a clear answer and remedy suggested to the people like the petitioners in the light of the decision rendered in **Dr.P.Pathmanathan Vs. Monica [(2021(2)CTC**



C.R.P.(MD)No.3080 of 2023

571. So the petitioners can very well redress their grievance before the trial court itself by filing appropriate application for deletion as the case may be.

23. Similarly for the request of dispensing with the personal appearance, the Co-ordinate Bench of this court in **Velumani and another Vs. Pavithra and another (CRP (MD) No. 2568 of 2023, dated 10/10/2023)** has observed like this.

*"12. Regarding the petitioner's prayer for dispensing with their personal appearance, it is necessary to refer the following direction in **Arul Daniel's** case above referred.*

"76....

iv. Personal appearance of the respondent(s) shall not be ordinarily insisted upon, if the parties are effectively represented through a counsel. From VII of the D.V Rules, 2006, makes it clear that the parties can appear before the Magistrate either in person or through a duly authorized counsel. In all cases, the personal appearance of relatives and other third



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C.R.P.(MD)No.3080 of 2023

parties to the domestic relationship shall be insisted only upon compelling reasons being shown. (See Siladitya Basak V. State of West Bengal (2009 SCC OnLine Cal 1903)“.

24.The same may be followed by the petitioners as well as the trial court.

25.So this civil revision petition deserves no consideration at all, of course with the above said liberty.

26.With the above said liberty, this civil revision petition stands **disposed of** without touching upon the merits of the matter. No costs. Consequently connected Miscellaneous Petition is closed.

04/04/2024

Index:Yes/No
Internet:Yes/No

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To,

1.The Judicial Magistrate,
Additional Mahila Court,
Madurai.

2.The Section Officer,



C.R.P.(MD)No.3080 of 2023

ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.

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G.ILANGOVAN, J

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C.R.P.(MD)No.3080 of 2023

C.R.P (MD) No.3080 of 2023

04/04/2024