



C.R.P.(MD)No.299 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 07/03/2024

CORAM

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

C.R.P(MD)No.299 of 2024

and

CMP(MD)Nos.1380 and 1381 of 2024

1.Mohamed Iqbal

2.Sayira Banu

3.Salihan Beevi

: Petitioners/R2 to R4

Vs.

1.Mohamed Sumaya

2.Minor Al-Rafa

Represented by her mother
and next friend Mohamed Sumaya

3.Minor Abdul Vahith

Represented by his Mother and

Next Friend Mohamed Sumaya : Respondents 1 to 3/
Petitioners 2 to 4

4.Abdul Samadh

: 4th Respondent/
1st Respondent

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records pertaining to DVC No.21 of 2023 pending before the Additional Mahila Court, Judicial Magistrate Level, Ramanathapuram and strike off the same as illegal so far as the petitioner's concern and pass such further or other orders.

For Petitioners : Mr.S.A.Syed Shaik Alaudeen



C.R.P.(MD)No.299 of 2024

O R D E R

WEB COPY This civil revision petition has been filed seeking to strike off the impugned DVC No.21 of 2022 on the file of the Additional Mahila Court, Judicial Magistrate Level, Ramanathapuram.

2.Heard the learned counsel appearing for the petitioners.

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.....



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C.R.P.(MD)No.299 of 2024

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



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C.R.P.(MD)No.299 of 2024

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.299 of 2024

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



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C.R.P.(MD)No.299 of 2024

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



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C.R.P.(MD)No.299 of 2024

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.299 of 2024

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.299 of 2024

"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.299 of 2024

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



C.R.P.(MD)No.299 of 2024

jewels and other household articles, apart from a house.

After the marriage, they started living in the matrimonial home as joint family. Due to wedlock, a female child born on 22/09/2015, followed by a male child on 19/10/2017. After the marriage, she was ill-treated by the husband and in-laws demanding more dowry. The husband went abroad even without informing the wife. So the wife along with the two childrens living in the parental home. In the meantime, the husband came to India to attend his sister's marriage and living with his wife and childrens for about two months. A panchayat was conducted in the presence of the Jamathars and at their advise, they were living separately. At that time, the husband addicted to liquor and used to assault the wife frequently. Thereafter, he went abroad without maintaining the wife and the childrens properly and sent Talaq notice on 03/04/2023 and 03/05/2023 at the instance of his parents and in-laws without any valid reasons. Subsequently, when the compromise talk is going on in the presence of the Jamathars, the husband sent another talaq notice on 03/06/2023 from abroad.

16. Seeking quashment of the same, this civil revision has been filed by the petitioners stating that the petitioners are noway connected in the matrimonial



C.R.P.(MD)No.299 of 2024

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issue between the husband and the wife. They attempted to mediate between the couples during the reconciliation by the Jamath members. The petitioners are not coming under the definition of domestic relationship under section 2(f) of the Act. After pronouncing triple talaq, the husband filed OS No.2023 before the Ramanathapuram Court, seeking divorce against the wife and it is stated to be pending.

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

18.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."*



C.R.P.(MD)No.299 of 2024

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19. 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 57)]**. 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.

20. 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



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C.R.P.(MD)No.299 of 2024

appear before the Magistrate either in person or through a duly authorized counsel. In all cases, the personal appearance of relatives and other third 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)".

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

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

23.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 Petitions are closed.

07/03/2024

Index:Yes/No
Internet:Yes/No

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C.R.P.(MD)No.299 of 2024

To,

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- 1.The Additional Mahila Court,
Judicial Magistrate Level,
Ramanathapuram.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(MD)No.299 of 2024

G.ILANGO VAN, J

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C . R . P (MD) No . 299 of 2024

07/03/2024