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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-07-2025

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THE HONOURABLE MR.JUSTICE P.B. BALAJI

CRP No. 997 of 2024

AND

CMP No. 5103 OF 2024

1. Azmatullah Shaik
S/o. Hidayatullah Shaik, No.41 West
Part, 1st Street, Sri Venkateswara
Nagar, Puthagaram Chennai 099.

Petitioner

Vs

1. Shaik Shabira Begum
D/o. Shaik Masthan, No.139/58,
Portuguse Church Street, Seven Wells,
Chennai 001.

Respondent

PRAYER

This civil revision petition is filed under Article 227 of the Constitution of India

praying to quash the complaint in DVC No. 38 of 2023 on the file of VIII

Metroplitan Magistrate, George Town Court, Chennai.



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CRP No. 997 of 2024



For Petitioner: Mr.J.Nandagopal

For Respondent: Mr.Venkatesan

ORDER

Heard Mr.J.Nandagopal, learned counsel for the petitioner and Mr. Venkatesan, learned counsel for the respondent.

2.The petitioner is the husband who is facing proceedings in [DVC.No.38/2023](#) before the VIII Metropolitan Magistrate, Chennai. The present revision has been filed seeking to strike off the said domestic violence complaint.

3.Mr.J.Nandagopal, learned counsel for the petitioner submits that there is no subsisting legally valid marriage between the parties, in view of the fact that the respondent even in her complaint to the Domestic Protection Officer has admitted to the fact that the respondent was earlier married to one Shaik Khader Masthan and that there is no valid dissolution of the said marriage.

4. In view of the said admission made by the respondent, Mr.J.Nandagopal, learned counsel for the petitioner states that there is a bar



under Section 256 of the Principles of Mohomedan Law which prohibits a Muslim woman from being married to more than one man at the same time. So

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therefore it is stated that the definition of “domestic relationship” under Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 would not apply to the facts of the present case and therefore the complaint itself is not maintainable in the eye of the law.

5. He would also point out the stand taken by the respondent, which is highlighted by the documents filed in support of the typed set of papers, where the wife executed a “Kula Nama” alleging that the dissolution of marriage is sanctioned by the Kagi and the marriage between the former husband of the respondent and the respondent has been legalised.

6. In this connection learned counsel, Mr.J.Nandagopal has stated that the Kagi has no powers to accept the Kula Nama and dissolve the marriage. In this connection, he relies on the Kazis Act, 1880, more specifically Section 4, and the decision of the Hon'ble Supreme Court in *D.Velusamy Vs. D.Patchaiammal and Vishwa Lochan Madan Vs. Union of India and others* reported in (2014)

7 Supreme Court Cases 707.

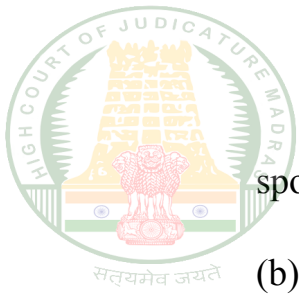


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7. In *Vishwa Lochan Madan case (cited supra)*, the Hon'ble Supreme Court had held that the power to adjudicate must flow from a valid law and a person deriving benefit from the adjudication must have the right to enforce it, and the person required to make provision in terms of adjudication, has to comply.

8. The learned counsel, therefore, placing reliance on the said decision contends that the Kagi is not competent to accept the Kula Nama and dissolve the marriage in terms of Section 4 of the Kazis Act, 1880; The contention of the respondent is that the marriage with earlier husband has been wrongfully dissolved and that it cannot be sustained in the light of the decision in ***D.Velusamy Vs. D.Patchaiammal***, where the Hon'ble Supreme Court has held that mere live in relationship will not entitle to a woman to the benefits of the Act and the complainant has to show that though there was no marriage, but the relationship was in the nature of marriage. Explaining the “close relationship in the nature of marriage”, the Hon'ble Supreme Court held that the following ingredients have to be fulfilled, namely;

(a) The couple must hold themselves out of society as being akin to



spouses.

(b) They must be of legal age to marry.

(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

(e) The parties must have lived together in a 'shared household' as defined in Sections 2(s) of the Act- Merely spending weekends together or a one night stand would not make it a 'domestic relationship'.

(f) If a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and /or as a servant it would not, be a relationship in the nature of marriage.

9. Therefore it is stated that Clause (c) above requires that the parties must be qualified to enter into a legal marriage, including they being unmarried.

Referring to the said ingredient, it is contended that the same has been clarified and reinforced by the Hon'ble Supreme Court in *Vishwa Lochan Madan case* (*cited supra*).

10. The learned counsel for the petitioner states that admittedly, when the earlier marriage has not been dissolved in a manner known to law, which is even the respondent's own statement, the parties cannot be said to be in a relationship



in the nature of marriage, and consequently, provisions of the Act are attracted.

He would therefore pray for the striking off the domestic violence complaint.

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11. Per contra, the learned counsel for the respondent, Mr. M.Venkatesan contends that the petitioner himself has approached the Court and filed a suit before the Family Court, Chennai, in OS. No. 24/2023, and invited my attention to paragraph Nos. 3 & 4 of the plaint in the said suit.

12. It is seen from the plaint that the revision petitioner herein has categorically made a statement that he has married the respondent herein, who is the defendant in the suit, in accordance with Islamic rights and customs and that the marriage was solemnised on 04.07.2022, at the residence of the defendant in Chennai. The petitioner has gone a step further and sought restitution of conjugal rights, which is available only to the spouse, namely either the husband or the wife. In the light of the stand taken by the revision petitioner before the family Court, it should not be open to him to contend at this stage that there is no valid marriage between the petitioner and the respondent and therefore the domestic violence complaint itself is not maintainable.



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13. In view of the stand taken by the petitioner, admitting the marriage with the respondent in his suit filed in [OS.No.24/2023](#), before the Family Court in Chennai, and also the disputed questions of fact arising, there is no occasion for this court to interfere with Article 227 of the Constitution of India and strike off the domestic violence complaint. The parties have to undergo the rigour of trial and establish their respective contentions before the Metropolitan Magistrate Court.

14. However, considering the fact that the Full Bench of this Court has directed that ordinarily the magistrate should not insist on the physical appearance of the respondent, in a domestic violence complaint, I am inclined to dispense with the presence of the revision petitioner before the Metropolitan Magistrate Court on all hearing dates, except where the appearance is necessary. In view of the domestic violence complaint pending from 2023, a direction is issued to the VIII Metropolitan Magistrate Court, George Town, Chennai, to dispose of the same, on merits and in accordance with the law, within a period of four months from the date of receipt of a copy of this order. The Magistrate shall decide the domestic violence complaint without being prejudiced by any



of the observations made herein, and it shall be open to the petitioner to canvass

all legal objections to the maintainability of the domestic violence complaint

before the Magistrate.

15. With the above observations and directions, this civil revision petition is disposed off. No costs. Consequently, the connected miscellaneous petition is closed.

24-07-2025

jrs

Index: Yes

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes



CRP No. 997 of 2024



CRP No. 997 of 2024

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To

1.The VIII Metropolitan Magistrate, Chennai.



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