

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28/10/2010

CORAM

THE HONOURABLE MR.JUSTICE G.RAJASURIA

CrI.O.P.(MD).No.10280 of 2010

and

M.P.(MD) Nos.1 and 2 of 2010

1.Vijaya Baskar

2.Mariappan

3.Sorna

4.Vijayakumar

5.Balamurugan

6.Mohana ... Petitioners

Vs.

Suganya Devi ... Respondent

Prayer

Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the records in Domestic and Violence Case in CrI.M.P.No.2307 of 2010 on the file of the Judicial Magistrate No.II, Madurai and quash the same.

!For Petitioners ... Mr.M.Venkateswaran

^For Respondent ... Mr.L.Murugan

Government Advocate (CrI. Side)

* * * * *

:ORDER

Heard both sides.

2. The germane facts absolutely necessary for the disposal of this petition would run thus:

The respondent herein preferred a complaint under Section 12 of the Protection of Women from Domestic Violence Act making allegations as against the husband and his relatives. The respondents 1 to 6 therein

preferred this CrI.O.P.(MD) No.10280 of 2010 to get quashed the said application filed by the respondent Suganya Devi on various grounds.

3. The learned counsel for the petitioners in the present petition placing reliance on the grounds of the petition filed under Section 12 of the Protection of Women from Domestic Violence Act would submit that ex-facie and prima-facie no case has been made out so as to attract the provisions of the Protection of Women from Domestic Violence Act; certain false statements are found set out in the application that she had been driven out of the matrimonial home; she also lodged a complaint against the petitioners invoking Section 498(A) I.P.C. and other sections and the petition under Section 125 Cr.P.C. claiming maintenance was filed by her; being not satisfied with those proceedings, she has come forward with the petition under the Protection of Women from Domestic Violence Act arraying all the petitioners without any ground whatsoever; there are self contradictory statements also between the version as found set out in the Domestic Violence Act and in the previous cases. Accordingly he prays for quashment of the petition on the ground that it is filed only to harass the husband viz. the 1st petitioner and his relatives, who are in no way concerned with the actual matrimonial dispute between the husband and wife.

4. Whereas the learned counsel for the respondent would oppose the move for quashment on various grounds by pointing out that this is not a fit case for quashment and according to him, the matter has to be gone into by the Magistrate.

5. The point for consideration is as to whether there are sufficient grounds for quashment under Section 482 Cr.P.C.?

6. At this juncture, I would like to recollect and hark back to the decisions of the Honourable Apex Court as under:

1.Kunga Nima Lepcha and others v. State of Sikkim and others reported in (2010) 2 Supreme Court Cases (Cri) 878;

2.Rubabbuddin Sheikh v. State of Gujarat and others reported in (2010) 2 Supreme Court Cases (Cri) 1006.

3.Ram Lal Narang v. State (Delhi Administration) reported in (1979) 2 Supreme Court Cases 322.

4.State of Haryana v. Bhajan Lal reported in AIR 1992 SUPREME COURT 604. Certain excerpts from it, would run thus:

"108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary powers under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulate and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceeding is manifestly attended with male fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

In fact, the *raison d'etre* of Section 482 Cr.P.C., is based on the maxim "*Quando aliquid mandatur, mandatur et omne per quod perventur ad illud.*" (When anything is commanded, everything by which it can be accomplished is also commanded.)

7. The learned counsel for the petitioner has invited the attention of this Court to the averments in the application filed under Section 12 of the Protection of Women from the Domestic Violence Act and has argued that those are all mere narrations and not backed by probable or possible evidence. According to him, the summons issued also to the petitioners is one nomenclatured as summons to the accused person, which itself is not tenable. The petitioners are having avocation of their own and if they are dragged to the Magistrate Court, then they will not be able to carry on with their day to day work.

8. At the outset the Magistrate was not right in issuing the summons to the accused person in this case invoking Section 61 of the Code of Criminal Procedure. The learned counsel for the petitioners in this petition would appropriately and appositely refer to Section 13 of the Protection of Women from Domestic Violence Act, which is extracted hereunder for ready reference: "13. Service of notice. - (1) A notice of the date of hearing fixed under Section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.

(2) A declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved."

Along with that, I would like to refer to Section 28 of the said Act, which reads as follows:

"28. Procedure. (1) Save as otherwise provided in this Act, all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the Court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23."

9. A mere reading of Section 13 of the said Act would amply make the point clear that at the initial stage, the Magistrate was not justified in treating the respondents in this case as accused and as such, hereafter relating to applications under Section 12 of the Protection of Women from Domestic Violence Act, the Magistrate should not issue summons under Section 61 Cr.P.C. treating the respondents as accused. What is contemplated under Section 13 of the Act is a notice specifying the date etc., The endeavour should be on the part of the officer concerned is to deal with the matter gently and treating the respondents in a gentle manner and that should not be lost sight of. Unless the appearance of the respondents are absolutely necessary on a particular date, they should not be simply harassed by compelling them to appear as though they are offenders. The Magistrate should not lose sight of the fact that so long as the case is anterior to the protection order being passed, they should be treated only as respondents. However, after the order under Section 18 of the Act is passed and if there is violation, then the proceedings might get changed and become criminal proceedings. As such, the Magistrates hereafter would scrupulously adhere to the mandates contained in the Act itself.

10. The contention of the learned counsel for the petitioner in this Criminal Original Petition is that the case of the petitioner in the petition filed under the Protection of Women from Domestic Violence Act is false. The truth or falsity of the averments made in the petition filed under domestic violence case cannot be gone into, now in this criminal original petition in view of the dicta as found set out in the decisions cited supra. In fact, before passing the Protection Order under Section 18 of the said Act enquiry has to be conducted, only with an intention to bring together the parties. The protection officer as well as the Magistrate should encourage and entice the parties to bury the hatchet and have peaceful living mixed with harmony and understanding. This Court while exercising its jurisdiction under Section 482 of Cr.P.C. at this stage is not expected to interfere and stall the proceedings also.

11. Paramount, it is, to consider the gamut and the scope of the Act, namely The Protection of Women from Domestic Violence Act, 2005; certain excerpts from the objects and reasons are of immense importance which would run thus:

"2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society."

12. The term 'civil law' twice used therein is not an empty formality and that would exemplify and demonstrate, display and convey that the proceedings at the first instance should be civil in nature. The legislators were conscious of the fact that all of a sudden if criminal law is enforced on the husband and his relatives, certainly that might boomerang and have deleterious effect in the matrimonial relationship between the husband and wife. The object of the Act is that the victim lady should be enabled by law to live in the matrimonial family atmosphere in her husband/in-laws' house. It is not the intention of the said enactment to enable the lady to get snapped once and for all her relationship with her husband or the husband's family and for that, civil law and civil remedies are most efficacious and appropriate and keeping that in mind alone in the Act, the initiation of action is given the trappings of civil proceedings which the authorities including the Magistrate responsible to enforce the said Act should not lose sight of.

13. The status of the respondents should not be treated as that of accused and that would spoil the very tenor and tone with which the Act has been drafted. Keeping that in mind alone, Section 13 of the Act would contemplate only service of notice on the respondents and Rule 6(5) of the Protection of Women from Domestic Violence Rules, would contemplate that the applications under Section 12 shall be dealt with

inconformity with Section 125 of the Code of Criminal Procedure, 1973.

14. It is obvious that the proceedings under Section 125 Cr.P.C are not in stricto sensu criminal proceedings.

15. After the passing of the protection order, if there is any violation, then only, such violation would constitute an offence under Section 31 of the said Act and Section 32 of the Act would indicate that such violation would amount to a cognizable and non-bailable offence.

16. It is, therefore, clear that the initial proceedings are civil in nature and the learned Magistrate should be extraordinary careful in selecting the appropriate persons as the respondents. Simply because the application under Section 12 of the Act might refer to large number of persons as respondents, the learned Magistrate is not duty bound to issue notice to all of them and there should be application of mind on the part of the Magistrate in selecting the respondents as to whom notice should be sent, as otherwise having too many respondents before the learned Magistrate, would constitute a stumbling block for arriving at a conclusion in summary proceedings. The famous adage "Too much of anything is good for nothing" should not be forgotten.

17. As such, keeping in mind the spirit of the Act and the purpose sought to be achieved, the learned Magistrate should process the application.

18. As such, at this stage, this Court cannot simply quash the proceedings under the Protection of Women from Domestic Violence Act on the ground that the petitioners in the Criminal Original Petition state that the allegations made in the Domestic Violence Act are all false.

19. The learned counsel for the petitioners would submit that the parties are at Chennai and the 1st petitioner is the husband, the second petitioner is the father of A1, the 3rd petitioner is the mother of A1, the 4th and 5th petitioners are the brothers of A1 and the 6th petitioner is the wife of A5 and it is difficult for them to appear before the Magistrate on every hearing.

20. Ex-facie and prima-facie, it is clear that the husband, his parents and his relatives have been summoned as accused, which the Magistrate could have avoided. Hence, I would like to sensitize that let the Magistrate apply his mind as to whether the presence of the respondents is absolutely necessary on a particular date and accordingly, send notice to such of those persons whose presence are absolutely necessary. The Magistrate shall see that the matter is dealt with as expeditiously as possible. Whenever any one or more of the respondents seek to get excuse from their absence in the proceedings, they are at liberty to petition the Magistrate which shall be considered sympathetically, but without detriment to the proceedings.

21. With the above observations, this petition is closed. Consequently, connected M.Ps. are closed.

sj

To

1.The Judicial Magistrate No.II,