

HIGH COURT OF MADRAS**Date of Decision: 05.02.2024.****CORAM: THE HON'BLE MR. JUSTICE K. MURALI SHANKAR**

C.R.P.(MD) No. 242 of 2024 and C.M.P.(MD) Nos. 1083 and 1084 of 2024

Pitchaikani ...PETITIONER/RESPONDENT**VERSUS****Parithakani ...RESPONDENT/COMPLAINANT****Legislation:**

Article 227 of the Constitution of India

Section 12 of the Domestic Violence Act

Section 482 of Code of Criminal Procedure

Sections 204, 29, 27, 31 of the Domestic Violence Act

Domestic Violence Rules, 2006

Subject: Civil Revision Petition seeking to strike off proceedings in a domestic violence case on the grounds of vague allegations and lack of jurisdiction.**Headnotes:**

Domestic Violence Act – Judicial Review – Article 227 of the Constitution of India – The High Court examined the maintainability of a Civil Revision Petition filed under Article 227 seeking to quash a complaint under the Domestic Violence Act. [Para 1, 4]

Jurisdiction of High Court under Article 227 – Held – The High Court's power of judicial review under Article 227 exists, but its exercise is subject to self-imposed restrictions, especially when an efficacious alternative remedy is available. Intervention is limited to cases of patent lack of jurisdiction. [Para 4, 5]

Role of Magistrate in Domestic Violence Act Proceedings – Directed – The Magistrate is required to scrutinize applications under the Domestic Violence

Act at the threshold and confine the inquiry to relevant parties. Issues of maintainability and preliminary issues can be raised before the Magistrate. [Para 6, 7]

Personal Appearance in Domestic Violence Cases – Guided – Personal appearance of respondents in Domestic Violence Act proceedings is not mandatory if effectively represented by counsel. The Magistrate may insist on personal appearance only upon compelling reasons. [Para 10, 11]

Decision – Dismissal of Civil Revision Petition – The Court found no legal ground to quash the complaint under the Domestic Violence Act invoking Article 227 and thus dismissed the Civil Revision Petition. Directed the Magistrate not to insist on the personal appearance of the petitioner/respondent in every hearing. [Para 9, 12]

Referred Cases:

- Arul Daniel and others Vs. Suganya and others, 2023 Cri. LJ 339
- L. Chandra Kumar v Union of India
- Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society, (2019) 9 SCC 538
- Dr. P. Pathmanathan Vs. V. Monica, 2021 1 MLJ (Cri) 311
- Kunapareddy @ Nookala Shanka Balaji Vs. Kunapareddy Swarna Kumari and another, (2016) 11 SCC 774
- Adalat Prasad v. Rooplal Jindal, ((2004) 7 SCC 338)
- V.K. Vijayalekshmi Amma v. Bindu V., (2010) 87 AIC 367
- Siladitya Basak v. State of West Bengal, (2009 SCC OnLine Cal 1903)

Representing Advocates:

Mr. S. Arivalagan for Petitioner

ORDER

The Civil Revision Petition has been filed, invoking Article 227 of the Constitution of India, seeking orders to call for the records in D.V.C.No.160 of 2023 pending on the file of the learned Judicial Magistrate, Additional Mahila Court, Madurai and strike off the same.

2. The respondent has filed a petition under Section 12 of the Domestic Violence Act against her husband. The learned Magistrate, after

taking the petition on file in D.V.C.No.160 of 2023, has issued notice to the petitioner.

3. The main complaint of the petitioner is that the respondent has raised vague and bald allegations, who has no connection whatever with the disputes raised by the respondent, has been implicated purposely and wantonly with an intention to harass him and to make unlawful gain if possible, that the respondent has not shown any material that she was subjected to domestic violence by the petitioner and that therefore, the very petition filed by the first respondent is liable to be quashed.

4. No doubt, the Hon'ble Full Bench of this Court in **Arul Daniel and others Vs. Suganya and others** reported in **2023 Cri. LJ 339**, while answering the reference, has specifically held that Section 482 of Code of Criminal Procedure has no application for challenging a proceedings under Section 12 of the Domestic Violence Act, but Article 227 of the Constitution of India can be invoked and it is necessary to refer the following passages hereunder:-

“40 The next question is whether the proceedings under Chapter IV of the D.V. Act can be assailed by way of a petition under Article 227 of the Constitution. Indubitably, the power of judicial review under the said provision is a part of the basic structure of the Constitution. After the decision of the Constitution Bench in L.Chandra Kumar v Union of India 27 , it is no longer open to doubt that the power of judicial review under Articles 226/227 cannot be taken away even by a constitutional amendment, let alone by a statute. Nevertheless, the existence of power is one thing and the exercise of power is quite another. Though the power of superintendence under Article 227 over the proceedings of the Magistrate under the D.V. Act exists, its exercise would, no doubt, be conditioned on certain very salutary principles one of which is

that a High Court will not exercise its power of superintendence if there exists an efficacious alternative remedy.

41.As has been adverted to, supra, the legislature has very thoughtfully provided an appellate remedy, under Section 31 of the D.V. Act, before the Court of Session against an order of the Magistrate. The existence of an appellate remedy would almost always be a “near total bar” for exercising power under Article 227, as has been pointed out by the Supreme Court in Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society 28 . An exception to the aforesaid rule is where the proceedings before the Court below are patently lacking in jurisdiction. An illustrative instance of such a case is where a Magistrate, who does not possess jurisdiction under Section 27, entertains an application under the D.V. Act or where the reliefs sought are outside the scope of the Act, etc. Such instances would, no doubt, be few and far between. We only reiterate that the policy of the D.V. Act is expedition, which cannot be achieved if all and sundry orders are called into question before the High Court. This aspect must necessarily weigh with the learned single judges while exercising jurisdiction under Article 227 in a challenge to proceedings under the D.V. Act.”

5. The Hon'ble Full Bench, while summarizing their conclusions, has specifically observed that a petition under Article 227 of the Constitution is maintainable on a limited ground of patent lack of jurisdiction and except on the limited ground indicated, jurisdiction under Article 227 of the Constitution will not be exercised, as a measure of selfimposed restriction, by-passing the statutory remedies under the D.V. Act, in the light of the decision of the Supreme Court in **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society and others** reported in **(2019) 9 SCC 538**. In the present case, it is not the case of the petitioners that there is patent lacking of jurisdiction.

6. 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 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.”

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

8. Considering the above, the petitioner is 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. On considering the entire facts and circumstances, this Court is of the clear view that the petitioner has not shown any legal ground or reason to quash the complaint invoking Article 227 of the Constitution and hence, this Court concludes that the Civil Revision is devoid of merits and the same is liable to be dismissed.

10. 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. 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 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)."

11. The Hon'ble Full Bench has reiterated the legal position that the proceedings under the Domestic Violence Act are civil in nature and as such, the respondent in the Domestic Violence complaint cannot be considered as accused and there is absolutely no need or necessity for them to appear for each and every hearing before the learned Magistrate. Hence, the learned Judicial Magistrate is directed not to insist the appearance of the

petitioner/respondent on every hearings, but at the same time, the learned Magistrate is at liberty to direct the petitioner/ respondent to appear if their appearance is necessary.

12. With the above observation and direction, this Civil Revision Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

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