



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Friday, the Eleventh day of June Two Thousand and Twenty One

PRESENT

THE HON'BLE MR JUSTICE G.R.SWAMINATHAN

C.R.P(MD).No.SR16753 of 2021

1. MUTHULAKSHMI

2. SAMINATHAN

... PETITIONERS/ RESPONDENTS 2 AND 3

Vs

VIJITHA

... RESPONDENT / PETITIONER

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to quash the proceeding in D.V.O.P.No.11 of 2021, on the file of the Judicial Magistrate Court No.I, Tirunelveli.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.P.M.VISHNUVARTHANAN, Advocate for the petitioners, the court made the following order:-

This petition has been filed under Article 227 of the Constitution of India for quashing the proceedings in DVOP No.11 of 2021 on the file of the learned Judicial Magistrate No.I, Tirunelveli, in so far as the petitioners herein are concerned.

2.The petitioners are parents-in-law of the respondent herein. The marriage between the petitioners' son and the respondent was solemnized on 30.01.2019 and a girl child was also born through the wedlock. The marital life of the respondent came under strain leading to filing of D.V.O.P No.11 of 2021. In the said petition, the respondent herein had arrayed her husband as the first respondent, the petitioners herein as the respondents 2 and 3 and her brother-in-law and wife of brother-in-law as the respondents 4 and 5. Contending that the institution of D.V.O.P. is an abuse of legal process, this petition has been filed.

3.Though this petition was filed as early as on 17.03.2021, the Registry did not number the petition. Therefore, the learned counsel made a mention before me yesterday for listing the matter. I directed the Registry to list the matter before me under the caption "For Maintainability".

4.The hesitation of the Registry to number the petition appears to be on account of the divergent views expressed in some of the



earlier orders of the Madras High Court. Earlier, to quash the proceedings filed under the Protection of Women from Domestic Violence Act, 2005, petitions used to be filed under 482 of Cr.P.C. This was put an end to by a Hon'ble Judge of this Court vide order in **Dr.P.Pathmanathan and others v. V.Monica and others (2021 (2) CTC 57)**. His Lordship Mr.Justice N.Anand Venkatesh held that the proceedings instituted under the Central Act 43 of 2005 are civil in nature and therefore, petition under Section 482 of Cr.P.C. will not lie to quash them. Even while laying down a set of directions indicating the remedies available to the aggrieved parties, it was also held that 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 jurisdiction under Article 227 is one of superintendence and is visitatorial 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. However, another Hon'ble Judge of this Court (His Lordship Mr.Justice S.M.Subramaniam) took a contrary view in **P.Arun Prakash and others v. S.Sudhamary (2021-2-Law Weekly- 518)** and held that the proceedings filed under the Central Act 43 of 2005 before the Criminal Court can only be termed as criminal proceedings. His Lordship further held that such proceedings cannot be transferred from a criminal Court to a civil Court/Family Court by exercising the supervisory power under Article 227 of Constitution of India.

5.The above view was however not in consonance with the approach adopted by His Lordship Mr.Justice A.D.Jagadish Chandira. Crl.OP No.17235 of 2016 (G.Jeyakumar vs. Jeyanthi) was filed under Section 407 of Cr.Pc for transferring the DV Act proceedings from Judicial Magistrate No.I, Pudhucherry to the file of the Family Court, Pudhucherry. After sustaining the contention that the proceedings are civil in nature, His Lordship considered the question as to whether the High Court has the power to effect the transfer sought for when the petition has been filed under Section 407 Cr.PC. The Hon'ble Judge in Paragraph 23 of the order cited the celebrated decision in Pepsi Foods Ltd vs. Special Judicial Magistrate (1998) 5 SCC 649 in which the Apex Court held as follows :

"25.Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court finds that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition one under Article 227 or Section 482 of the Code. It may not however, be lost sight of that



provisions exist in the Code of revision and appeal but sometime for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution."

After referring to another decision of the Apex Court reported in (2009) 5 SCC 162 (Nawab Shaqafath Ali Khan vs. Nawab Imdad Jah Bahadur), the petition filed under Section 407 of Cr.Pc was converted to one under Article 226 and 227 of the Constitution of India and relief was granted.

6.A slightly different situation arose in Mohana Seshathri vs. E.Anuja (2021-2-L.W-509). In the said case, Transfer C.M.P was filed under Section 24 CPC. The question arose as to whether power under the said provision can be exercised with respect to proceedings pending before a criminal court, even though the dispute is civil in nature. His Lordship Mr. Justice S.Vaidyanathan deemed it appropriate to invoke Article 227 of the Constitution to grant the relief of transfer.

7.Now the question before me is not whether the impugned proceedings instituted under Central Act 43 of 2005 are civil or criminal in nature. The conflict between the two decisions referred to earlier will have to be resolved only by a larger Bench to be constituted by My Lord the Hon'ble Chief Justice. The petitioners have also not prayed for transfer from one Court to another. The only relief that they want is that the impugned proceedings should be quashed as far as they are concerned. The petitioners have invoked Article 227 of Constitution of India.

8.In my view, the Registry should not have kept the petition unnumbered for so long. When in view of the statutory bar set out in Section 18-A of the SC/ST (Prevention of Atrocities) Act, a petition for anticipatory bail was not numbered by the Registry of the Madras High Court, the matter was taken up to the Hon'ble Supreme Court. In the decision reported in **(2019) 9 SCC 154 (P.Surendran v. State by Inspector of Police)**, it was held as follows :

"10.The act of numbering a petition is purely administrative. The objections taken by the Madras High Court Registry on the aspect of maintainability requires judicial application of mind by utilizing appropriate judicial standard..... In this context, we accept the statement of the Attorney General, that the determination in this case is a judicial function and the High Court Registry could not have rejected the numbering.



11. Therefore, we hold that the High Court Registry could not have exercised such judicial power to answer the maintainability of the petition, when the same was in the realm of the Court. As the power of judicial function cannot be delegated to the Registry, we cannot sustain the order, rejecting the numbering/registration of the Petition, by the Madras High Court Registry. Accordingly, the Madras High Court Registry is directed to number the petition and place it before an appropriate bench."

Respectfully and with utmost humility following the said decision, I hold that the Registry ought to have placed the papers before the Court, if it had any doubt or reservation regarding maintainability.

9. In the case on hand, the petition that was filed as early as on 17.03.2021 was returned on the ground of maintainability only on 19.05.2021. The Bar members complained that a number of petitions have been kept un-numbered.

10. Article 227 of the Constitution of India is to the effect that every High Court shall have the superintendence over all the Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. The text of the provision is forum-neutral. It makes no distinction between civil court and criminal court. In other words, the power under Article 227 can be exercised both over civil Courts as well as the criminal Courts. While the power under Section 482 of Cr.P.C., can be exercised only with reference to criminal proceedings before the criminal Courts, the power under Article 227 of Constitution of India is much wider and comprehensive. In hundreds of cases (reported and unreported), High Courts have struck off suits from the file of the civil courts on certain grounds, even though the parties had the remedy under Order 7 Rule 11 of CPC to seek rejection of plaint. Of course, there are settled parameters as regards the manner of exercise of the power. That is not the issue here. The issue relates to maintainability alone. The power under Article 227 of the Constitution cannot be ousted. Some may entertain the genuine belief that closing the Section 482 Cr.Pc gate would be rendered meaningless if a new opening is created under Article 227 of the Constitution. If the petitioner fails to make out a case, I may decline to exercise the power but I am not prepared to hold that I am divested of the jurisdiction which the Constitution has conferred upon me.

11. I therefore hold that irrespective of whether the proceedings under Central Act 43 of 2005 are civil or criminal, the power under Article 227 of the Constitution would always lie to quash the proceedings, if a case is really made out.



12.The Registry is directed to number the petition and list the matter for admission before the portfolio Judge on 16.06.2021.

sd/-
11/06/2021

/ TRUE COPY /

/ /2021

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1 THE JUDICIAL MAGISTRATENO.I,
TIRUNELVELI.

2 DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.

COPY TO:

THE SUB ASSISTANT REGISTRAR, AE SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN

C.R.P(MD).No.SR16753 of 2021
Date :11/06/2021

SKM

MS/MNR/SAR-3/11.06.2021/5P.4C

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