

"...The Act can be applied retrospectively to take cognizance of the act of violence alleged to have been committed even prior to the coming into force of the Act...."

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 2.4.2008.

CORAM

THE HON'BLE MR.JUSTICE M.JEYAPPAUL

CrI.O.P.No.7156 of 2007

and

M.P.Nos.1 and 3 of 2007

1. Dennison Paulraj
 2. Baby Mercy
 3. G.Devasagayam
 4. Johnson Gunaraj Devasagayam
 5. Jasmine glory
 6. Jhansi Rani
- Petitioners

vs.

Mrs.Mayawinola
Respondent

Criminal Original Petition filed under section 482 Cr.P.C. seeking to call for the records pertaining to the private complaint filed by the respondent in C.M.P.No.1772 of 2007 in unnumbered M.C. Of 2007 pending on the file of Judicial Magistrate II, Poonamallee and quash the same as against the petitioners.

For petitioners: Mr.M.Venkataraman, Senior Counsel
for Mr.V.Krishnakumar

For respondent : Mr.Ramasubramanian for
M/s.Ram & Ram

ORDER

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The petition is filed seeking to quash the private complaint taken on file in C.M.P.No.1772 of 2007 pending on the file of the learned Judicial Magistrate II, Poonamallee.

2. The sum and substance of the petition filed by the respondent, who is the wife of the first petitioner herein, invoking the provision under section 23(2) of the Protection of Women from Domestic Violence Act 2005 (in short the Act) read with rules 6(4) and 7 of the Rules framed therein is as follows:-

The respondent herein married the first petitioner herein on 5.7.2004 at CSI Trinity Church, Avadi. The respondent lived with the first petitioner in the matrimonial home. All the petitioners herein started harassing the respondent. Having made sarcastic comments on the shortage of cash and jewels and about the quality of the articles given to the respondent during her marriage by her parents, started pressurising the respondent to bring more money from her parents. The second petitioner who is the mother-in-law of the respondent, ill-treated her without even providing proper food. She was not allowed to take rest. The second petitioner extracted work from morning till evening and treated her as maid servant. The respondent, therefore, suffered mental agony ever since her pregnancy and got depressed. She also underwent psychological and emotional abuse, insults and intimidation from the petitioners herein on a day to day basis. The petitioners also made an attempt to abort the pregnancy of the respondent by giving some tablets and papaya fruits. The respondent had to leave the matrimonial home during her pregnancy with tears. The first petitioner had filed a petition seeking judicial separation setting out all sorts of baseless allegations against the respondent. The petitioners threatened the respondent and her parents not to contest the matrimonial proceedings pending before the Family Court, Chennai. They have also warned that if the respondent continues to contest the matrimonial proceedings launched by the first petitioner, the petitioners would engage mercenaries to kill the respondent and her parents along with her child. For the last six months, the respondent received unanimous phone calls threatening her and her family members with dire consequences, if she chose to contest the matrimonial proceedings filed by the first petitioner. The respondent and her family members were threatened not to interfere with the second marriage of the first petitioner with some other girl. The respondent also suffered mental agony and on account of which her general health got deteriorated. The respondent also has filed application praying for protection order and residence order to live with the first petitioner in the matrimonial home with her child. Therefore, the respondent has prayed that the petitioners should be restrained from wielding any threat or indulge in any violence or giving out intimidation to the respondent and her child and her relatives. She has also sought for re-entry along with her child to the matrimonial life with the first petitioner. She has also prayed to restrain the petitioners from repeating, abetting or aiding the acts of domestic violence against her and her child. In the alternative, she seeks for residence for her living with the first petitioner.

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3. The petitioners challenge the aforesaid proceedings initiated by the respondent on three grounds.

The first ground is that the present petition has been laid by the respondent abusing the process of law after the first petitioner filed a petition seeking judicial separation before the Family Court.

Secondly, it is contended that though the Protection of Women from Domestic Violence Act, 2005 came into force on 26.6.2006, the petition under challenge was filed only on 23.2.2007 alleging certain acts of domestic violence before she left the matrimonial home in the month of March 2005. Therefore, no petition can be laid invoking the provision of the Act seeking protection order and residence order.

The third contention is that the proceedings initiated by the respondent can be brought to the court of the Family Court at Chennai to try the same along with the petition filed by the first petitioner seeking judicial separation.

4. Learned Senior Counsel appearing for the petitioners would contend that the present petition has been filed just to harass the first petitioner who has already initiated proceedings seeking judicial separation from the Family Court, Chennai. The present petition is an after-thought to counter the proceedings initiated by the first petitioner for judicial separation. Further, no petition can be filed under the Act for the act of domestic violence which allegedly took place prior to the coming into force of the Act. Any statute with penal consequences for that matter cannot operate retrospectively. It is his last submission that in the interest of justice and also for the convenience of the parties, the present proceedings, if not quashed, can be tagged with the petition filed by the first petitioner seeking judicial separation before the Family Court, Chennai.

5. **Three points arise for determination** in this criminal original petition.

Firstly, the court has to decide **whether there is any abuse of process of law** by the respondent in filing the petition under the Protection of Women from Domestic Violence Act, 2005.

The second point that arises for consideration is whether the **petition filed invoking the provisions of the Act is maintainable.**

Thirdly, **whether these proceedings can be transferred to the Family Court, Chennai** to enquire into the same along with the proceedings initiated by the first petitioner for judicial separation.

6. It is true that the first petitioner has filed O.P.No.887 of 2005 on 12.4.2005 seeking judicial separation from the respondent. To take the petition under the Act, the court has to see whether there is prima facie allegation of act of domestic violence levelled

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against the petitioners by the respondent. **The initiation of the proceedings seeking judicial separation by the first petitioner is not a bar to invoke the protection under the Act by the wife.** The court which enquires into the petition will have to ultimately decide whether the present petition has been filed by the wife only to counter the petition seeking judicial separation filed by the first petitioner. Inasmuch as necessary allegations are found in the petition about the alleged act of domestic violence committed by the petitioners herein, the court finds that the Judicial Magistrate has rightly taken the petition on file.

7. There is no dispute to the fact that the marriage between the first petitioner and the respondent was solemnized on 5.7.2004 and the respondent left the matrimonial home in the month of March 2005. The Act has come into force on 26.6.2006. Firstly, it is found that there is a specific allegation that for about six months prior to the filing of the present petition on 23.2.2007, a threat emanated from the petitioners not to contest the matrimonial proceedings pending before the Family Court, Chennai at the instance of the first petitioner. It has also been averred in the petition that the respondent was warned with dire consequences if she continued to contest the said matrimonial dispute. She has also specifically set out in the petition that she received phone calls from unknown callers wielding threat to her with dire consequences if she contested the matrimonial proceedings filed by the first petitioner. A part of the act of violence has been alleged after the Act has come into force on 26.6.2006. Therefore, the court finds that it is not factually correct to say that the entire allegations of act of violence relate to the period prior to March 2005 before the Act came into force on 26.6.2006.

8. On a careful perusal of section 31 of the Act, it is found that the act of domestic violence does not attract penal consequence as per the Act. Only if a protection order is passed and the respondent in the main petition violates the protection order passed by the court, then such act of breach of protection order is construed as an offence. The penal consequence emanates from the date of protection order passed by the court. But, it does not date back to the act of domestic violence committed by the husband and his relatives. **Therefore, it is farfetched to contend that the provisions of the Act can be invoked only if any domestic violence is committed after the Act came into force. The court is competent to take cognizance of the act of domestic violence committed even prior to the Act came into force and pass necessary protection orders. The Act can be applied retrospectively to take cognizance of the act of violence alleged to have been committed even prior to the coming into force of the Act.**

9. Section 26 of the Act gives liberty to the affected person to seek reliefs under sections 18, 19, 20, 21 and 22 of the Act in any legal proceedings before a Civil Court, Family Court or Criminal Court. It is not necessary for the affected person to invoke only the Act to seek protection from domestic violence. Even part of the reliefs can be sought under the Act. **There is no bar for the aggrieved person to**

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seek the other part of the reliefs under the Act before a Civil Court or a Family Court or a Criminal Court.

10. It is true that the Family Court where the proceedings for judicial separation initiated by the first petitioner is pending as against the respondent is also empowered to address the grievance of act of domestic violence by an aggrieved person. But, the respondent alleged to have been affected by the act of domestic violence would contend that she prefers to conduct the summary proceedings initiated by her under the Act only before the learned Judicial Magistrate II, Poonamallee. After all, the proceedings under the Protection of Women from Domestic Violence Act, 2005 is a summary one in nature. It does not require lengthy trial engaging both the parties for quite a long time. But, the proceedings initiated for judicial separation will take its own time. Therefore, transferring this matter to the Family Court may not serve the purpose, it is found.

11. In view of the above, the court finds that there is no merit in the petition seeking to quash the proceedings in C.M.P.No.1772 of 2007 on the file of the Judicial Magistrate II, Poonamallee. **Therefore, the petition stands dismissed.**

ssk.

To

Judicial Magistrate II,

Poonamallee.

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