



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 31.08.2009

Coram:-

The Hon'ble Mr. Justice R.REGUPATHI

Crl. O.P. No. 91 of 2009 and
M.P. No. 1 of 2009

K. Viswanathan

... Petitioner/
Respondent No.5

vs.

Sivamalar

... Respondent/
Petitioner

Prayer: Petition filed under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

For Petitioner : Mr.V. Gopinath,
Senior Counsel for Mr.L.Mahendran

For Respondent : Mr. P. Duraisamy
Mr. C.S.Saravanan

O R D E R

The 5th respondent in the C.M.P filed before the trial court, admittedly driver of the 1st and 2nd respondents is the petitioner herein and he seeks for a direction to call for the records and quash the proceedings in C.M.P. No. 8207 of 2008 filed under Sections 12, 17, 18 and 19 of the Protection of Women from Domestic Violence Act 2005 before the Judicial Magistrate No. 1, Coimbatore, who took the same on file and ordered issuance of summons. The 5th respondent in the C.M.P. No. 8207 of 2008,

3. Learned Senior Counsel for the petitioner submits that admittedly, the petitioner is neither a family member nor having any domestic relationship with the family of respondents 1 and 2 and under such circumstance, he is erroneously included as one of the respondents in the application. By referring to Para 13a of the



application, wherein the applicant prays for a declaration to the effect that she is entitled to reside in the shared household and the prayer at Para 13b for a direction to respondents 1 to 5 to hand over gold jewellery and sridhana property in their custody, learned Senior counsel submits that a person can be included as a respondent in an application of this kind only in the event of the aggrieved person establishing the domestic relationship with such person sought to be taken as respondent as a family member living together in the joint family and contended that the petitioner is not a person coming under the purview of "respondent" and he is not in possession and control over the sridhana property; therefore it is a fit case to quash proceedings against him.

4. Per contra, learned counsel for the respondent submits that specific allegations have been made in Para No. 6 of the application to the effect that the petitioner was always acting as if he was also a family member in the household and playing a dominant role by taking important decisions, but curiously respondents 1 to 4 are under the clutches of the petitioner for unknown reasons. It is also alleged that the petitioner even had the audacity to abuse the husband of the respondent herein in front of his parents.

5. Heard the submissions made on either side and perused the materials available on record.

6. The words "respondent" and "domestic relationship" have been defined in 2 (f) (q) of the Protection of Women from Domestic Violence Act, 2005.

2(f): "'Domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family"

2(q) "'respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act."

7. Having regard to the operation of the Act as against the



person who is sought to be taken as "respondent" in the proceedings initiated thereunder, it must be pointed out that unless the aggrieved person, namely, respondent herein, substantiates that the person concerned has got domestic relationship or that he is a family member, such person cannot be mechanically impleaded as one of the respondents in the application. If the respondent has any grievance against the petitioner, she is always at liberty to initiate proceedings against him before the appropriate forum for any offence committed by him against her, if she is so advised.

8. Considering the facts and circumstance, I do not find any justification on the part of the trial court in including the petitioner as one of the respondents in the application; therefore, the proceeding pending in CMP No. 8207 of 2008 on the file of the learned Judicial Magistrate No. I, Coimbatore is directed to be quashed in so far as the petitioner / 5th respondent is concerned.

9. Accordingly, the Criminal Original Petition is ordered and consequently, miscellaneous petition is closed.

Ar

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. Judicial Magistrate No. I,
Coimbatore

2. Do- Through The Chief Judicial Magistrate Coimbatore.

+ 1 CC to Mr. L. Mahendran, Advocate (SR.43650)

Crl. O.P. No. 91 of 2009

KS(CO)
VC(23.09.2009)