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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.801 of 2022
and
CMP(MD)No. 3236 of 2022

Muniyandi ... Petitioner

versus

1. M. Chitradevi
2. Minor Kavishmithran
   represented by his mother/first respondent ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records pertaining to DVC No. 16 of 2021 on the file of the Learned Judicial Magistrate, Devakkottai and set aside the impugned complaint as illegal.

For Petitioner : Mr.V.Kannan

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ORDER

Civil Revision Petition is filed against the proceedings initiated by the first respondent herein in D.V.C.No.16 of 2021 before the Judicial Magistrate, Devakottai. The petitioner herein is respondent in D.V.C.No.16 of 2021.

2. The Hon'ble Full Bench of this Court, in the reference made in Crl.O.P.SR.Nos.31852 of 2022, etc. (batch), dated 17.11.2022, has answered as follows:

> "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 visitorial 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. (See Abdul Razak v Mangesh Rajaram Wagle (2010) 2 SCC 432, Virudhunagar Hindu Nadargal

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Dharma Paribalana Sabai v Tuticorin Educational Society (2019) 9 SCC 538). In normal circumstances, the power under Article 227 will not be exercised, as a measure of self-imposed restriction, in view of the corrective mechanism available to the aggrieved parties before the Magistrate, and then by way of an appeal under Section 29 of the Act."

3. The Hon'ble Full Bench of this Court has also held that the personal appearance of the parties shall not be insisted upon, if the parties are effectively represented through a counsel. The relevant portion is extracted as under:

"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

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domestic relationship shall be insisted only upon compelling reasons being shown. (See Siladitya Basak v. State of West Bengal (2009 SCC OnLine Cal 1903)."

4. This Civil Revision Petition is filed challenging the proceedings initiated by the first respondent under Section 12 of the Protection of Women from Domestic Violence Act and not filed on the ground of lack of jurisdiction. Therefore, this Civil Revision Petition is not maintainable before this Court, as per the decision rendered by the Hon'ble Full Bench (cited supra). However, this Court is inclined to dispose of the Civil Revision Petition in the following terms:

(i) If the petitioner is having any grievance that he has been unnecessarily added as party to the proceedings, it is open to him to file an application before the learned Magistrate to delete his name and if any such application is filed, the learned Magistrate shall decide the same, as per the decision of the Hon'ble Supreme Court in ***Kunapareddy v. Kunapareddy Swarna Kumari,*** reported

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in **(*2016) 11 SCC 774***.

(ii) If the petitioner is represented through a counsel, the learned Magistrate shall not insist on the personal appearance of the petitioner. However, the petitioner shall appear before the Court as and when his presence is required by the Court.

(iii) The learned Magistrate is directed to dispose of D.V.C.No.16 of 2021 as expeditiously as possible preferably within a period of five months from the date of receipt of a copy of this order.

5. Accordingly, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

30.11.2022

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Index : Yes / No.
Internet : Yes / No.

To

Judicial Magistrate, Devakkottai.

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B.PUGALENDHI, J.

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