

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD).No.8646 of 2015

Loha

: Petitioner

vs.

The District Educational Officer,
Srivilliputhoor,
Virudhunagar District.

: Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India for the issue of a Writ of Mandamus to direct the respondent to consider the representation of the petitioner dated 22.01.2015 and to pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.S.Balakarthish
for M/s.K.J. Associates

For Respondent : Mr.V.Muruganandham
Additional Government Pleader

ORDER

The prayer in the Writ Petition is for a Writ of Mandamus to direct the respondent to consider the representation of the petitioner dated 22.01.2015.

2.Mr.V.Muruganandham, learned Additional Government Pleader takes notice for the respondent and by consent of both parties, the writ petition itself is taken up for final disposal.

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was married to one Ashwin Sriram on 14.02.2013 and after marriage, the husband of the petitioner had gone to Pune. In the meantime, a difference of opinion arose between the petitioner and her husband viz., Ashwin Sriram and after conciliation by her husband, she joined with him. However, things got worsened, when her husband demanded dowry and that her father-in-law also tried to molest her, pursuant to which, she lodged a Police complaint before All Women Police Station, Srivilliputhoor and thereafter, she was driven out of her matrimonial home. On the complaint of the petitioner, a case has been registered against her husband Ashwin Sriram, father-in-law Alagarsamy, mother-in-law Geetha and sister-in-law Divya Sri in Crime No.8 of 2014 for the offences punishable under Sections 498(A), 406, 506(i) of I.P.C. and Section 4 of Tamil Nadu Women Harassment Act. She has also filed a case under Domestic Violence Act before the Judicial Magistrate No.I, Srivilliputhoor in DVA No.5 of 2014

against her husband and in-laws and the same is pending. While so, as a counter blast, a false case has been foisted against the petitioner and her family members in Crime No.10 of 2014.

4. Learned counsel for the petitioner has further submitted that the petitioner has recently come to know that her father-in-law is going to be promoted as Head Master in the school, which comes within the jurisdiction of the respondent. As per the rules, a person, who is having a criminal case, is not entitled to be promoted to the next category. Suppressing the real fact of pendency of criminal case, he is about to obtain promotion as Headmaster. Therefore, the petitioner has made a representation to the respondent to take departmental action against her father-in-law with the further request not to grant any promotion to him, as criminal case is pending against him. Since no action was taken by the respondent on the representation made by the petitioner, she has come before this Court with the present Writ Petition.

5. Heard both sides.

6. Now-a-days, filing cases under the Domestic Violence Act by female members has become a common one and a neutral and unprejudiced law is needed to protect the genuine victims of domestic violence, irrespective of gender. It is no doubt true that the perpetrators of domestic violence need to be appropriately punished and dealt with, but at the same time, protection cannot be withheld from real victims for any reason whatsoever, least of all their gender. One can be certain that there is something sinister about a law, when it intimidates and instills fear in innocent people. When a person, who has not committed any crime, begins to fear punishment under the provisions of a law, it will certainly create panic amidst male genders. The notable flaw in this law is that it lends itself to such easy misuse that women will find it hard to resist the temptation to “teach a lesson” to their male relatives and will file frivolous and false cases. A similar trend is already being observed in the case of anti-dowry law (498-A), which is being misused to such an extent that the Supreme Court has termed it “Legal Terrorism”. The Hon'ble Supreme Court in the case of Sushil Kumar Sharma vs. Union of India and others (Writ Petition (civil) 141 of 2005), decided on 19.07.2015, has held as follows:

“.....The object of the provision is prevention of the dowry meance. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bonafide and have filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignomy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work. As noted the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not assassins' weapon. If cry of "wolf" is made too often as a prank assistance and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any strait jacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre- conceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumption that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumption are drawn which again are reputable. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that in innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally indisputable that in many cases no direct evidence is available and the courts have

to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.

7. Though this Court is not examining in this case as to whether there is any violation of the provisions of Domestic Violence Act and other matrimonial offences, a bare reading of the affidavit shows that the above said provisions were used by the petitioner as a tool to wreak vengeance against her husband and in-laws and since her father-in-law is a Government servant, it has become so easier for her to target him more so as to easily throw him out of the job, by lodging a complaint in order to pressurize him to come to a settlement in one way or the other. Therefore, it cannot be said that there is no misuse of the Act.

8. However, it is to be remembered that insofar as the employer, under whom the father-in-law of the petitioner is working, is concerned, the petitioner is a third party. The decision with regard to initiation of any action against her father-in-law, viz., Alagirisamy, has to be necessarily taken by the authorities concerned, as the same is well within their realm. The petitioner cannot harass the employee, by way of sending

representation to his employer to act in a particular manner as she wanted by insisting upon the employer for speedy action. In case a spouse asks certain details or documents under the Rights to Information Act about his / her partner from the department where he / she is working for the purpose of presentation either before the Family Court or Criminal Court, even the concerned department cannot deny such request of the spouse, as there can be no impediment for said department under the provisions of the RTI Act, if the RTI Act is applicable to that department.

9. In this case, it is to be seen that the petitioner is the daughter-in-law of the said Alagirisamy and she does not have locus standi to ask for documents pertaining to her father-in-law from the department. As such, she is also not entitled to seek a direction to the employer of her father-in-law to consider her representation dated 22.01.2015 for stoppage of his further promotion, as the direction being sought by the petitioner is in no way helpful to the petitioner to resolve and amicably settle the issue so as to live with her husband, if she is really interested in reunion. The conduct of the petitioner may have the reversal effect in the matrimonial front in case she decides to reunite with her husband in future.

S.VAIDYANATHAN, J.

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10. Hence, finding no merit in this frivolous writ petition filed by the petitioner, the same is dismissed with cost of Rs.5,000/- (Rupees Five Thousand only) payable to the Chief Justice Relief Fund, which, in turn, shall be forwarded to the persons affected in Nepal Earthquake Tragedy. Consequently, connected miscellaneous petition is also closed.

08.06.2015

Index: Yes / No

Internet: Yes / No

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To

The District Educational Officer,
Srivilliputhoor,
Virudhunagar District.

W.P.(MD)No.8646 of 2015