

Pannerselvam Vs Dheivanai

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Court : Chennai

Decided On : Aug-29-2025

Judge : Honourable Mr.Justice P.B. Balaji

Appeal No. : CRP/948/2025

Appellant : Pannerselvam

Respondent : Dheivanai

Judgement :

THE HIGH COURT OF JUDICATURE AT MADRAS RESERVED ON :
19.08.2025

PRONOUNCED ON : 29.08.2025

CORAM:

THE HON'BLE MR. JUSTICE P.B. BALAJI and C.M.P. No.5472 of 2025

1. Pannerselvam

2. Parvathy ... Petitioners vs. Dheivanai ... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records pertaining to the D.V.C. No.11/2024 on the

file of the learned Judicial Magistrate No.II at Walajapet and quash the same. For Petitioners : Mr. R. Suryaprakash For Respondent : Mr.R. Ramesh -----

ORDER

The revision petitioners claim to be the husband and wife. The respondent herein claiming herself to be the wife of the first petitioner has initiated Domestic Violence Complaint against both the petitioners and the petitioners have come forward with the present revision to strike of the Domestic Violence Complaint in D.V.C. No.11 of 2024.

2. I have heard Mr.R. Suryaprakash, learned counsel for the petitioners and Mr.R. Ramesh, learned counsel for the respondent.

3. The learned counsel for the petitioners would contend that the

petitioners are happily married husband and wife and with an ulterior motive and false allegations, the respondent claiming as if she is the wife of the first petitioner has initiated maintenance claim in M.C. No.1 of 2021, which was pending before the Judicial Magistrate, Vaniyambadi and subsequent to transfer it has been re-numbered as M.C. No.20 of 2022.

4. The petitioners have stoutly denied the matrimonial relationship between the first petitioner and the respondent and according to them, the first petitioner and the respondent have never been husband and wife and they never lived together in any relationship.

5. The learned counsel for the petitioner states that having filed

Maintenance Claim way back in 2021, after a lapse of more than three years, the present Domestic Violence Complaint has been initiated. According to the learned counsel for the petitioners, the respondent has

not even explained the delay and is trying to rake up issues that have allegedly arisen in the year 2019 and referring to the averments in the maintenance case, the learned counsel for the petitioners would state that there is absolutely no allegation of any incidents of domestic violence against the petitioners and only when the maintenance case was taken up for trial, the respondent has rushed to file a Domestic Violence Complaint, with totally false and baseless allegations.

6. The learned counsel for the petitioners would further state that

the property in which the respondent was residing was the property that was taken on rent by the respondent herself and the petitioners, more specifically, the first petitioner has absolutely no role to play and it is falsely alleged by the respondent that an immovable property has also been purchased by the first petitioner in the name of the respondent and

that the original documents are available inside the tenanted premises, which has been locked by the landlord consequent to default in payment of rent and it is therefore prayed that the petitioners are willing to defend the maintenance claim in a manner known to law, but they cannot be subjected to harassment before the criminal Court in a false Domestic Violence Complaint filed by the respondent. The learned counsel for the petitioner would therefore pray for revision being allowed and the Domestic Violence Complaint viz., D.V.C. No.11 of 2024, being struck off.

7. Per contra, the learned counsel for the respondent Mr.R.Ramesh

would state that the respondent has filed not only the marriage invitation card, which evidences the marriage of the first petitioner and the respondent, but also a birth certificate of a male child, born to the first petitioner and the respondent on 20.02.2011.

8. The learned counsel would further contend that the petitioners

were husband and wife admittedly and they were not blessed with any children and therefore with the consent of the second petitioner, the first petitioner married the respondent and a male child was also born to them as referred herein above. He would therefore state that petitioners are

liable to face the domestic violence and moreover the respondent has no house to stay and the landlord has also forcibly evicted her from the tenanted premises and she is also unable to take care of her minor son, who is studying and only for the purposes of shelter and maintenance, the respondent was forced to approach the Court seeking maintenance and also, in parallel, filed the Domestic Violence Complaint. He would rely on the decision of the Hon'ble Supreme Court in the case of Rajnesh vs. Neha and another reported in (2021) 2 SCC 324, where the Hon'ble Supreme Court held that the wife is entitled to initiate parallel proceedings for maintenance under the Criminal Procedure Code as well as the Domestic Violence Complaint. He would therefore state that the petitioners have to necessarily undergo trial in the Domestic Violence Complaint and they cannot be entitled to strike of the Domestic Violence Complaint.

9. I have carefully considered the submissions advanced by the learned counsel on either side.

10. Even pending the above revision, a request was made by the

respondent to direct the first petitioner to co-operate with her for retrieving the articles lying inside the tenanted premises since according to the respondent / wife, the landlord was willing to open the lock and

permit the respondent to remove her belongings, only if the first petitioner also accompanies her. This Court clarified that the first petitioner need not sign as husband of the respondent, but he can go over to the premises to facilitate the respondent to take back her belongings. According to the learned counsel for the respondent, the original Sale

Deed in respect of the immovable property that has been purchased by the first petitioner in the name of the respondent has also been stuck inside the tenanted premises. Unfortunately, despite two interim orders passed by this Court there has been no headway and the deadlock continues and it appears that the respondent has not been able to get back her belongings and therefore, the Civil Revision Petition was directed to be argued and thereafter, I have therefore heard the arguments of the learned counsels, which have been summarised herein above.

11. Firstly, it is the case, where the marriage between the first

petitioner and the respondent is in serious dispute. According to the petitioners, they are husband and wife already and this factum is not disputed even by the respondent. However, it is the case of the respondent that with the consent of the second petitioner, the first petitioner married the respondent. Whether there was consent or not, admittedly, the marriage between the petitioners is subsisting and the

marriage between the first petitioner and the respondent is clearly prohibited under the provisions of the Hindu Marriage Act, 1955 and therefore, the respondent cannot claim to be the legitimate wife of the first petitioner, which could be evidenced, even from her own admission in the Domestic Violence Complaint as well as from the submissions advanced by the learned counsel for the respondent.

12. No doubt, the respondent has claimed that the first petitioner is

her husband and she has filed a maintenance claim way back in 2021 and the same was numbered as M.C. No.1 of 2021. Subsequently it has been transferred to the file of Judicial Magistrate, Ambur and the same is pending in M.C. No.20 of 2022. It is admitted by both the parties that the said M.C. is in part heard stage and PW1 is being cross examined.

13. In the maintenance case, the respondent has not made any

allegations whatsoever against the petitioners and her only contention is that the first petitioner and the respondent are husband and wife and they were blessed with a male child, born on 20.02.2011 and the first petitioner has neglected to maintain them and therefore, claim for interim maintenance has been made. The said maintenance proceedings are being contested by the first petitioner on the same lines of defence that is

raised here viz., there is no relationship of husband and wife between the first petitioner and the respondent and therefore, the first petitioner is not entitled to pay any maintenance to the respondent. After a lapse of close to five years, the present Domestic Violence Complaint has been filed in the year 2024. On a reading of the Domestic Violence Complaint, it is seen that the allegations are all relating to the period 2019 and not later. The documents on which reliance is placed on by the respondent are the marriage invitation card which indicates that the first petitioner and the respondent were married on 22.11.2007 and the Birth Certificate issued by the Tirupattur Municipality which reflects the name of the first petitioner as the father and the respondent as the mother of a male child, born on 20.02.2011. Apart from these two documents, the other documents viz., the Sale Deed in favour of the respondent and the document signed as rental agreement are self serving documents and no reliance can be placed on the same, even coming to the conclusion that the first petitioner and the respondent are husband and wife.

14. I find that on 02.11.2020, the respondent has issued a notice to

the first petitioner claiming that she is the lawfully wedded wife of the first petitioner and that though the petitioners were already husband and wife, the first petitioner proceeded to marry the respondent since the

petitioners were not blessed with any issues. In the said notice, it is further contended that the first petitioner has provided only a rental residence to the respondent though it was promised by the petitioners that the respondent would also be allowed to occupy the same house and share the household items of the petitioners. The said notice which was issued on 02.11.2020, there is no whisper about any allegation involving the offences under the Domestic Violence Act. A claim simpliciter for maintenance has been made. The said notice has been followed up with M.C. No.1 of 2021. Even before the protection officer, the request of the respondent is only that she must be allowed to join and live with the first petitioner and the first petitioner should maintain the Son born to them. The protection officer has referred the complaint to the Magistrate, who in turn has also taken cognizance of the case. When the very relationship as husband and wife is in serious dispute, the complaint under the Domestic Violence Act cannot be entertained for the mere asking of the respondent, alleging that the first petitioner is her husband. As already stated excepting the marriage invitation and the Birth Certificate, none of the other documents come to the aid of the respondent to establish the relationship of husband and wife as claimed by her. Even the ration card, only reflects the name of the respondent as the head of the family and

does not even mention the name of the first petitioner, leave alone he being the head of the family. The marriage invitation card is again only a self serving document and not a public document and on which, too much reliance can be placed on. Similarly even the Birth Certificate is a document issued by the Municipality based on the information provided by the mother at the time of delivery of the child to the hospital / Municipality. Therefore, without their being a clear and categorical admission of proof that the first petitioner and the respondent are lawfully wedded husband and wife, I am afraid the Magistrate erred in taking cognizance of the Domestic Violence Complaint. More so, because there

has been a delay of almost five years in lodging the Domestic Violence Complaint raising allegations about incidents that happened in

2019. If really such incidents had happened / occurred in 2019, they

would have surely found a place in the lawyer's notice issued by the respondent and also in the maintenance claim filed by her. The absence of any such allegations are conspicuous. Therefore, the very claim of the respondent that the petitioners have indulged in the act of domestic violence is also in serious doubt.

15. Be that as it may, the respondent has already approached the Magistrate Court seeking for maintenance and that is the complaint that

she had made even in the representation to the Protection Officer. Therefore, I see no purpose in the petitioners being prosecuted before the Magistrate, under the Domestic Violence Act, 2005 for Protection of Women. The respondent can always establish her claim of being the wife of the first petitioner before the Judicial Magistrate and thereupon she may be entitled for interim maintenance under the provisions of the Criminal Procedure Code.

16. I do not see any requirement for the parallel enquiry to be conducted under the Protection for Women from Domestic Violence Act,

2005. No doubt, the Hon'ble Supreme court has held in Rajnesh's case

that there is no bar for maintenance being sought for simultaneously before the Family Court under the Hindu Marriage Act the maintenance claim before the Criminal Court under the Criminal Procedure Code and again maintenance under the provisions of the Domestic Violence Act. However, this case does not deal with the case where the relationship between the husband and wife is not admitted and there is serious challenge to the claim of the respondent that she married the first petitioner. In fact, it is the specific case of the petitioners that the first respondent and the respondent have not lived together even for a single

day. The genuineness / veracity of the Birth Certificate as well as the

marriage invitation can always be tested before the Judicial Magistrate, Ambur, where the maintenance claim is pending and therefore, I find that the very initiation of the Domestic Violence Complaint, that too belatedly is merely an attempt to harass the petitioners. The respondent can very well proceed with the maintenance claim filed by her and if she is able to establish the factum of marriage with the first petitioner then she would be entitled to maintenance for herself and her minor son. Therefore, the interest of the respondent is also adequately protected and it would be sufficient, if the parties agitate all their claims and contentions before the Judicial Magistrate Court, Ambur, in the pending Maintenance Claim. I do not see as to how the Domestic Violence Complaint filed belatedly being maintainable, when the first petitioner has seriously disputed the factum of the alleged marriage claim between the first petitioner and the respondent.

17. For all the above reasons, I am inclined to allow the revision

petition and strike of the DVC No.11 of 2024 learned Judicial Magistrate No.II at Walajapet. It is made however clear that the Judicial Magistrate, Ambur shall decide and dispose of M.C. No.20 of 2022 on merits and in accordance with law without being prejudiced by any of the observations that may have been made in this revision, which was only for the purposes of testing the vires of the Domestic Violence Complaint. No costs. Consequently, connected miscellaneous petition is closed. 29.08.2025 Internet:Yes/No Index:Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No vsi2

P.B. BALAJI, J.

vsi2 To The Judicial Magistrate No.II, Walajapet.

PRE-DELIVERY ORDER

IN and C.M.P. No.5472 of 2025 29.08.2025

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