

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 3810 of 2023

Petitioner :- Deepak Kumar Nishad

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Prakhar Tandon

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Prakhar Tandon, learned counsel for the petitioner and Sri L.D. Rajbhar, learned AGA for the State.

2. This petition has been filed under Article 227 of the Constitution of India for following relief:

"(i) To set aside the impugned order dated 07.10.2022 passed by the learned Session Judge, Kanpur Nagar in Criminal Appeal No. 114 of 2022.

(ii) Set aside the impugned order dated 29.08.2022 passed by the learned Metropolitan Magistrate-II, Kanpur Nagar in complaint case no. 7230 of 2018.

(iii) Direct the learned Metropolitan Magistrate-II, Kanpur Nagar to decide the application dated 23.03.2021 filed by the petitioner afresh."

3. The submissions of the petitioner are as below:-

- Filing of application under section 12 of Protection of Women from Domestic Violence Act, 2005 (*hereinafter referred to as 'D.V. Act'*) after 14 years of marriage is clear abuse of process of law.
- The respondent no. 2-Smt. Vandana Nishad (his wife), has been staying with the petitioner all along and she is still staying in his house.
- She never filed any complaint, with the police, as regard the demand of dowry, before filing this application under section 12 of D.V. Act.
- Further that the facts as narrated in the application moved by his wife under section 12 of D.V. Act is nothing but mental cruelty to him.
- My attention has been drawn to paper no. 14, which is copy of a complaint dated 20.09.2018, to support the contention that the application has been given with false facts and the entire complaint does not mention any date, time or place when and where the incident of domestic violence were committed.
- The D.V. Act came into force on 13.09.2005, therefore, for any incident which took place before such date, the Act will not be applicable.
- As per section 31 of the D.V. Act, the limitation period is only one year from the date of the incident and as the complainant didn't

disclose the date of any incident and that complaint has been filed after 14 years of marriage, the complaint shall not be maintainable and should have been dismissed at the very beginning.

4. I went through the material on record including the impugned orders, the complaint filed under section 12 of D.V. Act, the averments as contained in the petition.

From perusal of material, following relevant facts emerge:-

(i) Respondent no. 2-Smt. Vandana Nishad, wife of petitioner filed a petition/application on 20.09.2018, under section 12 of D.V. Act alleging domestic violence committed by her husband, the O.P.

(ii) The O.P.-husband moved an application on 23.03.2021 challenging maintainability of the application. In the aforesaid application the O.P. took all those grounds as have been taken by him in the instant petition.

(iii) The main contention is that the provisions of the D.V. Act do not apply and that the outer limit for taking cognizance, as provided under section 31 of the D.V. Act, is merely one year and that the complaint did not mention any particular time, date and place, when alleged acts of domestic violence took place.

5. Learned trial court heard both the sides and referred to two judgments of Supreme Court which said that the conduct of the parties even prior to the coming into force of the Protection of Women from Domestic Violence Act, 2005 could be taken into consideration, while passing an order under section 18, 19 and 20 of D.V. Act. The petitioner preferred an appeal against the above judgment. The trial court took all the contentions, one by one and found that whenever an act of domestic violence is committed, a new timeline for limitation, as provided under section 468 Cr.P.C. shall run. The appellate court also took a view that the allegations against O.P.s showed that there were continuing acts of domestic violence. Further that the complaint was presented on 20.09.2018 and the Act came into force in 2006, therefore, the provisions shall apply.

6. I considered the submission of both the sides. Section 12 of the D.V. Act provides that an aggrieved person may apply to the Magistrate for seeking one or more reliefs as provided in the Act. These reliefs may include seeking of protection orders under section 18, residence orders under section 19, monetary reliefs under section 20, custody orders under section 21 and compensation orders under section 22. 'Aggrieved person' means any woman who is, or has been, in a domestic relationship with the respondent and who has been subjected to any act of domestic violence. What act, omission or commission or conduct of the respondent shall constitute domestic violence has been defined under section 3 of the D.V. Act. From the very definition of 'domestic violence', an inference can be drawn that there can be a single act, commission or omission or there can be a series of acts, omissions or commissions, which may broadly be called 'conduct'. The Section 3, Explanation (II) provides that overall facts and circumstances shall be taken into consideration for drawing any inference whether any act, omission or commission or conduct of the

respondent constituted domestic violence. The only inference which can be drawn from these provisions is that there may be a thread of continuity in the acts/omission/commission of the acts or there can be single act/omission/commission. The law does not at all require that particular date, time and place should be mentioned in the complaint. These questions may have a bearing or may be material when the court appreciates the oral evidence given by the parties, but to say that these are the essential requirements of a complaint, will be unmeaning.

7. The provisions of section 31 of the D.V. Act are as below:-

"31. Penalty for breach of protection order by respondent.-(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

8. Section 31 of the D.V. Act shall only apply, when complaint is filed for a breach of protection order. Section 31 of the D.V. Act has no applicability in case of any application filed under section 12 of the D.V. Act. Chapter V of the D.V. Act and sections from 31 onwards have applicability, when a protection order is passed by a Magistrate and the same is violated.

9. In my view, there was no occasion for moving an application assailing the maintainability of the proceeding drawn under section 12 of the D.V. Act. Not only the application but this petition too is wholly misconceived and devoid of any merits.

10. Accordingly, this petition is **dismissed**.

Order Date :- 12.10.2023

#Vikram/-