

HIGH COURT OF JUDICATURE AT ALLAHABAD

(SL No.13)

Court No. - 78

Case :- APPLICATION U/S 482 No. - 39990 of 2024

Applicant :- Sagar

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Abhijeet Singh, Gulab Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Abhijit Singh, learned counsel for the applicant and Sri Rajesh Kumar Gupta, learned A.G.A. for the State respondents.
2. The instant application under section 482 Cr.P.C. has been filed by the applicant seeking quashing of impugned recovery warrant dated 24.7.2024 as well as the consequential orders passed in Case No.18/11 of 2024 (Smt. Laxmi and another Vs. Sagar) pending in the court of Judicial Magistrate-3, Aligarh under Section 128 Cr.P.C.
3. Learned counsel for the applicant submits that for execution of the order of monitory compensation as well as the maintenance awarded under the provisions of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'Act, 2005'), the trial court had proceeded for the execution of the said order under Section 128 Cr.P.C. which is impermissible. Submission of learned counsel for the applicant is that opposite party no.2 ought to have filed an application under Section 31 of the Act, 2005 and then as per Rules 6(5) of the Domestic Violence Rules the Magistrate could have proceeded to recover the amount under the provisions of Section 125 Cr.P.C. and independent proceedings under Section 128 Cr.P.C. for recovery of the compensation awarded under the provisions of Act, 2005 are not maintainable.
4. Per Contra, learned A.G.A. submits that Section 31 of the Act, 2005 provides for the penalties for breach of the any protection order passed under the Act, 2005. So far as the provisions of Rule 6(5) of the Domestic Violence Rule is concerned that is limited to the application under Section 12 of the Act, 2005 where the

monitory compensation has been awarded under Section 20 of the Act, 2005, the provisions of Rule 6(5) will not apply. Powers under Section 128 Cr.P.C. are independent powers for recovery of the maintenance awarded for the enforcement of the maintenance awarded by the Magistrate and the said powers are not limited to the maintenance awarded only under Section 125 Cr.P.C., therefore, there is no illegality in the proceedings initiated by the opposite party no.2 for recovery of maintenance amount awarded under Section 20 of the Act, 2005 under the provisions of Section 128 Cr.P.C.

5. Having heard the rival submissions made by learned counsel for the parties and perused the record.

6. From the record of the case it is apparent that the applicant no.1 is the husband of opposite party no.2. There was a matrimonial dispute. Being aggrieved by the same the opposite party no.2 had filed Complaint Case No.1025 of 2021 against the applicant under Sections 12, 18, 20, 22, 23 of the Act, 2005 which was allowed by the Magistrate ex-parte vide order dated 4.9.2023. Since the applicant did not comply the order dated 4.9.2023, whereby one time compensation of Rs.50,000/- was awarded as maintenance for the mental and physical torture and the maintenance at the rate of Rs.3,000/- per month was awarded to the opposite party no.2 and Rs.2,000/- per month to the daughter of opposite party no.2. In addition to the same Rs.1,500/- per month was also awarded as the rent for shelter of the opposite party no.2. Since the applicant has failed to pay the said amount, the opposite party no.2 had moved an application under Section 128 Cr.P.C. seeking recovery of the aforesaid amount of maintenance as well as the rent awarded in the proceedings under the Act, 2005, which is pending adjudication before the trial court. Despite service of notice the applicant herein did not participate in the said proceedings. Recovery warrants have been issued against him vide order dated 24.7.2024 which is continuing against the applicant. Being aggrieved by the same the instant application under Section 482 Cr.P.C. has been filed by the applicant herein.

7. Before proceeding further it would be relevant to take note of the provisions of Act, 2005. The Sections 12, 18, 19, 20, 22, 23 as well as Section 31 are quoted herein below:-

"12. Application to Magistrate

(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking

one or more reliefs under this Act: Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent: Provided that where a decree for any amount as compensation or damages has been passed by any Court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the Court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

18. Protection orders

The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from

(a) committing any act of domestic violence;

(b) aiding or abetting in the commission of acts of domestic violence;

(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

(g) committing any other act as specified in the protection order.

19. Residence orders

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require: Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the Court may also pass an order directing the officer in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

20. Monetary reliefs

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the Court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

22. Compensation orders

In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

23. Power to grant interim and ex parte orders

(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

Section 31(1)

(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."

8. It is further relevant to take note of the provisions of Rule 6 of the Domestic Violence Rules, 2006 which reads as under:-

"6. Applications to the Magistrate.—(1) Every application of the aggrieved person under section 12 shall be in Form II or as nearly as possible thereto.

(2) An aggrieved person may seek the assistance of the Protection Officer in preparing her application under sub-rule (1) and forwarding the same to the concerned Magistrate.

(3) In case the aggrieved person is illiterate, the Protection Officer shall read over the application and explain to her the contents thereof.

(4) The affidavit to be filed under sub-section (2) of section 23 shall be filed in Form III.

(5) The applications under section 12 shall be dealt with and the orders enforced in the same manner laid down under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974)."

9. It is also relevant to take note the provisions of Sections 125 and 128 Cr.P.C. which reads as under:-

"125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain -

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate [* *] [The words "not exceeding five hundred rupees in the whole" omitted by Act 50 of 2001, w.e.f. 24.9.2001.], as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct :*

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this subsection, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct.

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

(2) [Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.] [Substituted by Act 50 of 2001, Section 2 (w.e.f. 24-9-2001).]

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] [Substituted by Act 50 of 2001, Section 2 for "allowance" (w.e.f. 24-9-2001).] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made :

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. - If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] [Substituted by Act 50 of 2001, Section 2 for "allowance" (w.e.f. 24-9-2001).] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

[Substituted by Act 32 of 1988, Section 2, for certain words (w.e.f. 25-5-1988).]

UTTAR PRADESH.- *In its application to the State of Uttar Pradesh, in Section 125, -*

in sub-section (1), for the words "five hundred rupees", substitute, "five thousand rupees";

(b) after sub-section (5), insert the following sub-section, namely :-

"(6) Where in a proceeding under this section it appears to the Magistrate that the person claiming maintenance is in need of immediate relief for his support and the necessary expenses of the proceeding, the Magistrate may, on his application, order the person against whom the maintenance is claimed, to pay to the person claiming the maintenance, during the pendency of the proceeding such monthly allowance not exceeding five thousand rupees and such expenses of the proceeding as the Magistrate consider reasonable and such order shall be enforceable as an order of maintenance." [Uttar Pradesh Act 36 of 2000, Section 2, w.e.f. 13.8.2001.]

S. 128 Enforcement of order of maintenance

A copy of the order of maintenance or interim maintenance and expenses of proceeding, as the case may be shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance for the maintenance or the allowance for the interim

maintenance and expenses of proceeding, as the case may be is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance or as the case may be expenses, due."

10. From the perusal of the aforesaid provisions, it is apparent that Section 12 of the Protection of Women from Domestic Violence Act, 2005 provides the mechanism by which an aggrieved person can approach the Magistrate, seeking relevant reliefs for redressal of their grievance under the Act. Section 18 provides for protection orders to be passed, prohibiting the respondents from committing any act of domestic violence, or aiding or abetting the commission of any act of domestic violence, and restraint orders against the respondents from approaching the place of employment or communicating with the aggrieved person in any other manner, or alienating any assets, bank accounts, bank lockers, etc., or causing any violence to the dependents or other relatives of the aggrieved person. Section 20 provides for the monetary relief which could be awarded to the aggrieved person due to loss of earning, medical expenses, loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person, and the maintenance for the aggrieved person as well as her children. Section 22 empowers the Magistrate to award compensation for damages and injuries, including mental torture and emotional distress caused by the act of domestic violence committed by the accused person. Section 23 provides for the grant of interim maintenance and *ex-parte* orders to the proceedings under Section 12 of the Domestic Violence Act. Thus, Section 31 of the Domestic Violence Act provides for penalties for breach of a protection order by the respondents, which is referable to Section 18 of the Act and it provides that any breach of a protection order passed by the learned Magistrate in favor of the aggrieved person would amount to an offense, which is punishable with imprisonment for a term, which may extend to one year, or with a fine of up to Rs. 20,000/- or both. Thus, in case of a violation of the protection orders passed under Section 18, if there is any breach, it would amount to an offense for which the respondents can be prosecuted.

11. Rule 6 of the Domestic Violence Rules provides for the procedure how the application under Section 12 of the Act is required to be filed. Sub-section (5) of Rule 6 provides the manner in which the application under Section 12 is to be dealt with by the Magistrate, and also the enforcement of the orders passed under Section 12 of the Domestic Violence Act. It further provides that

orders so passed by the Magistrate shall be enforced in the same manner laid down under Section 125 Cr.P.C.

12. Section 125(3) of the Code of Criminal Procedure provides for the execution of the order of maintenance passed by the Magistrate, and for every breach of the order, he can issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month. For violation of the order of maintenance for each month, the respondent can be imprisoned for a term which may extend to one month or until payment if sooner made. The provisions of Section 125(3) Cr.P.C. can be exercised by the Magistrate when passed the order under Section 125 Cr.P.C. However, Section 128 Cr.P.C. provides that any Magistrate at any place where the person against whom the order of maintenance has been passed is present, can execute the order of maintenance against him, after satisfying as to the identity of the parties and the non-payment of the allowance or as the case may be expenses due. Thus, the only difference between powers under Sections 125 and 128 of the Cr.P.C. is with regard to the execution of the maintenance order is that powers under Section 125(3) Cr.P.C. can be exercised by the Magistrate who has passed the order of maintenance, whereas powers under Section 128 Cr.P.C. can be exercised by any Magistrate throughout the country where the person against whom the order is passed is found. Even under Section 128 Cr.P.C., the procedure for execution of the order would remain the same i.e., as provided under Section 125(3) Cr.P.C.

13. In the instant case, the application for execution of the maintenance order passed under the provisions of the Domestic Violence Act has been filed by the opposite party no.2 before the Judicial Magistrate, who passed the order of maintenance and the application has been referred to under Section 128 Cr.P.C. Merely, because Section 128 Cr.P.C. has been referred to in the application for execution of the maintenance order, the proceedings would not become barred as Section 128 Cr.P.C. is wide enough, which includes any Magistrate anywhere in the country where the respondent resides and is found. Therefore, the Magistrate before whom the instant application under Section 128 Cr.P.C. has been filed has to follow the procedure under Section 125(3) Cr.P.C. for execution of the order, which is being done in the instant case by the Additional Civil Judge (Junior Division)/ Judicial Magistrate, Fast Track Court, Court No.1, Aligarh, who is competent to deal with the execution of the order.

14. Therefore, there is no illegality in the proceedings initiated against the applicant herein. Therefore, this Court do not find any good reason to entertain the instant application and to interfere in the proceedings initiated against the applicant herein. Accordingly, the instant application lacks merit and is hereby **dismissed**.

Order Date :- 16.7.2025

Kpy

(Anish Kumar Gupta,J.)