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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of Judgment: 05th July, 2017*

W.P.(CRL) 1856/2017

ROHIT

..... Petitioner
Through: Mr. Sunil Kumar Chaturvedi,
Advocate.

versus

STATE & ANR.

..... Respondents
Through: Mr. Rahul Mehra, Standing Counsel
(Criminal) with Mr. Jamal Akhtar,
Advocate for State.

CORAM:**HON'BLE MR. JUSTICE VINOD GOEL.****VINOD GOEL, J. (ORAL)****Crl.M.A. 10325/2017 (exemption)**

Exemption allowed subject to all just exception.

Application is disposed of.

W.P.(CRL) 1856/2017 & Crl.M.A. No. 10324/2017

1. The petitioner has filed this writ petition under Article 226 read with Article 14 and 21 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (in short "Cr.PC") for issuance of a writ of Certiorari against the respondents to adjudicate the impugned Domestic Incidence Report (in short "DIR") dated 21.04.2014 along with free and fair trial in Domestic Violence Case No. CC/1785/1/14 and to issue a writ of mandamus against the respondents directing them to give equal opportunity to the petitioner and direct the Protection Officer to follow the due process in preparing the DIR.

2. Mr. Rahul Mehra, learned standing counsel for the State appears on an advance copy having been served.
3. It is submitted by the learned counsel for the petitioner that the marriage between the petitioner and respondent no. 2 was solemnized on 11.02.2012 at Dwarka, New Delhi in accordance with Hindu rites and ceremonies. On 12.03.2013, the respondent no. 2 left the petitioner and later on filed a complaint against the petitioner and his parents and sister, which was converted into FIR No. 70/2014 under Sections 498A/406/34 IPC at PS CAW Cell, Nanak Pura, New Delhi and a case being CrI. Case No. 429513/2016 arising out of the said FIR is pending before the Ld. MM, Mahila Court, Dwarka, New Delhi. The respondent no. 2 has also filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short "DV Act") before the Ld. MM, Mahila Court, Dwarka, New Delhi vide No. CC/1785/1/14.
4. It is submitted that on the first date of hearing in the said case under DV Act, on 15.04.2014, the Ld. MM called for DIR from the Protection Officer, who submitted the report on 21.04.2014. The Ld. MM did not take the cognizance of the DIR and no free copy of the DIR was provided to him as provided under Section 207 of Cr.PC. He obtained certified copy of DIR on 11.05.2017.
5. The petitioner has placed on record copies of all the orders of the Ld. MM, Mahila Court, Dwarka, New Delhi, from 15.04.2014 till 01.12.2015. On 01.12.2015 an interim order was passed directing the petitioner herein to pay a sum of Rs.10,000/- per month to the

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respondent no. 2 herein till the disposal of the complaint. The protection order was also passed prohibiting the petitioner from: -

- (i) committing any act of domestic violence upon the complainant;
- (ii) aiding or abating in the commission of the acts of domestic violence;
- (iii) entering the place of employment of the complainant and other place frequented by the complainant;
- (iv) attempting to communicate in any form, whatsoever, with the complainant, including personal, oral or written or electronic or telephone contact.

6. Learned counsel for petitioner submits that the Ld. MM, Mahila Court has not taken cognizance of the DIR dated 21.04.2014; the Protection Officer has neither shown the place of incidence in his report nor annexed the site plan of the incidence; Protection Officer is not specific about the date and time of the domestic violence; he has not mentioned the specific role of the respondents; he has not acted as an independent statutory body and acted at the behest of respondent no.2; he has not provided the free copy of the impugned DIR; and the respondent no. 1 violated the fundamental rights guaranteed under Article 14 and 21 of the Constitution of India as free and fair trial was not conducted in the case under DV Act.
7. Learned counsel for the petitioner further submits that the Protection Officer should act as an independent authority; he should try to do counselling of the husband and wife to save the family; he must visit the place of incidence of the domestic violence before preparing the

DIR; and he must submit the DIR before the trial court in the presence of the parties.

8. Learned counsel for petitioner submits that the respondent no. 2 herein filed her reply in his appeal i.e. Criminal Appeal no. 10/2016 in which she annexed the copy of the said DIR and after disposal of his appeal on 22.04.2017 the petitioner requested for supplying free copy of the impugned DIR, which was declined and he obtained the certified copy of the impugned DIR, which was received by him on 11.05.2017.
9. I have heard the learned counsel for the petitioner and the learned standing counsel for the State.
10. The duties and functions of the Protection Officer are enumerated in Section 9 (1) and (2) of the DV Act, which reads as under: -

“9. Duties and functions of Protection Officers. – (1) It shall be the duty of the Protection Officer: -

(a) to assist the Magistrate in the discharge of his functions under this Act;

(b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;

(c) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;

(d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;

(e) to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;

(f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;

(g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;

(h) to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);

(i) to perform such other duties as may be prescribed.

(2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act."

11. A perusal of the provision reflects that it is the duty of the Protection Officer to assist the Magistrate in the discharge of his functions under DV Act; to make a domestic incident report in such manner as may be prescribed, upon receipt of a complaint and forward copies thereof to the police officer concerned; to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order; to ensure that the aggrieved person is provided free legal aid under the Legal Services Authorities Act, 1987; to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities; to make available a safe shelter home, if the aggrieved person so requires; to get the aggrieved person medically examined if she has sustained bodily injuries and forward

the report to the police station and the Magistrate; to ensure that the order for monetary relief under Section 20 of DV Act is complied with and executed, in accordance with the procedure prescribed under Cr.PC; and to perform such other duties as may be prescribed.

12. Rule 8 of the Protection of Women from Domestic Violence Rules, 2006 (in brief "DV Rules") further indicates the duties of the Protection Officer, which reads as under: -

"8. Duties and functions of Protection Officers.—(1) It shall be the duty of the Protection Officer—

- (i) to assist the aggrieved person in making a complaint under the Act, if the aggrieved person so desires;
- (ii) to provide her information on the rights of aggrieved persons under the Act as given in Form IV which shall be in English or in a vernacular local language;
- (iii) to assist the person in making any application under section 12, or sub-section (2) of section 23 or any other provision of the Act or the rules made thereunder;
- (iv) to prepare a "Safety Plan" including measures to prevent further domestic violence to the aggrieved person, in consultation with the aggrieved person in Form V, after making an assessment of the dangers involved in the situation and on an application being moved under section 12;
- (v) to provide legal aid to the aggrieved person, through the State Legal Aid Services Authority;
- (vi) to assist the aggrieved person and any child in obtaining medical aid at a medical facility including providing transportation to get the medical facility;
- (vii) to assist in obtaining transportation for the aggrieved person and any child to the shelter;
- (viii) to inform the service providers registered under the Act that their services may be required in the proceedings under the Act and to invite applications from service providers seeking particulars of their members to be appointed as Counsellors in proceedings under the Act under sub-section (1) of section 14 or Welfare Experts under section 15;
- (ix) to scrutinise the applications for appointment as Counsellors and forward a list of available Counsellors to the Magistrate;

- (x) to revise once in three years the list of available Counsellors by inviting fresh applications and forward a revised list of Counsellors on the basis thereof to the concerned Magistrate;
- (xi) to maintain a record and copies of the report and documents forwarded under sections 9, 12, 20, 21, 22, 23 or any other provisions of the Act or these rules;
- (xii) to provide all possible assistance to the aggrieved person and the children to ensure that the aggrieved person is not victimized or pressurized as a consequence of reporting the incidence of domestic violence;
- (xiii) to liaise between the aggrieved person or persons, police and service provider in the manner provided under the Act and these rules;
- (xiv) to maintain proper records of the service providers, medical facility and shelter homes in the area of his jurisdiction."

(2) In addition to the duties and functions assigned to a Protection Officer under clauses (a) to (h) of sub-section (1) of section 9, it shall be the duty of every Protection Officer

- (a) to protect the aggrieved persons from domestic violence, in accordance with the provisions of the Act and these rules;
- (b) to take all reasonable measures to prevent recurrence of domestic violence against the aggrieved person, in accordance with the provisions of the Act and these rules.

13. Under Rule 8 (1), the Protection Officer is to assist the aggrieved person in making a complaint under the Act, if the aggrieved person so desires; to provide information on the rights of aggrieved persons under the Act given in Form IV; to assist the person in making any application under section 12 (2) or section 23 or any other provision of the Act or the rules; to prepare the Safety Plan including measures to prevent further domestic violence to the aggrieved person; to provide free legal aid to the aggrieved person, through the State Legal Aid Services Authority; to assist aggrieved person and any child in obtaining medical aid; to assist in obtaining transportation for the

aggrieved person and any child to the shelter; to invite applications from service providers seeking particulars of their members to be appointed as Counsellors in proceedings under the DV Act and forward a list of available Counsellors to the Magistrate; to revise once in three years the list of available Counsellors by inviting fresh applications; to maintain a record and copies of the report and documents forwarded; to provide all possible assistance to the aggrieved person and the children to ensure that the aggrieved person is not victimized or pressurized as a consequence of reporting the incidence of domestic violence; to liaise between the aggrieved person or persons, police and service provider; and to maintain proper records of the service providers, medical facility and shelter homes in the area of his jurisdiction.

14. Under sub-rule (2) of Rule 8, it is further provided that it shall be the duty of every Protection Officer to protect any aggrieved person from domestic violence in accordance with the Act and these Rules and to take all reasonable measures to prevent further domestic violence against the aggrieved person in accordance with the provisions of the Act and Rules.

15. The preamble of the DV Act reads as under: -

“An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.”

16. The preamble of DV Act is the guiding force and the Act is framed by the legislature to provide “more effective protection” of the “rights of women guaranteed” under the Constitution of India who are “victims

of violence of any kind occurring within the family” and for matters connected therewith.

17. In this writ petition the petitioner has nowhere alleged or claimed that he has been prejudiced by the DIR dated 21.04.2014 in any manner. If the copy of DIR was not supplied to the petitioner, he could have requested the learned MM on next date i.e. 25.07.2014. There is no embargo under the DV Act or Rules that DIR cannot be filed in between the dates of hearing. Rather filing of the DIR prior to next date of hearing would facilitate the learned MM to go through it and deal with the issues effectively. The Protection Officers are appointed under Section 8 of the DV Act and their duties and functions are enumerated in Section 9 of the DV Act and also in Rule 8 of the DV Rules. The Protection Officer is not only to assist the Magistrate in discharge of his function under the Act but also it is the duty of the Protection Officer to assist the aggrieved person and also to protect the aggrieved person from domestic violence and to take the preventive measures to stop the domestic violence.
18. The “aggrieved person” is defined in Section 2 (a) of DV Act as “any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subject to any act of domestic violence by the respondent”. The petitioner, not being a woman, cannot claim parity with that of the aggrieved person.
19. The learned counsel submits that judgment of this Court in CrI.M.C. 3108/2008 titled as *Ravi Dutta vs. Kiran Dutta & Another* decided on 11.02.2014 has not been followed by the learned MM. Petitioner had admittedly availed of remedy by filing Criminal Appeal No.10 of

2016 which had been disposed off. The petitioner has neither mentioned the details of the appeal nor placed on record copy of order passed therein in his endeavour to conceal points raised and adjudicated by the appellate court.

20. In this matter, the respondent no. 2 is an aggrieved person, who is the wife of the petitioner. None of the orders placed on record reflects that the copy of DIR was ever requested by the petitioner herein or declined. Learned counsel submits that he had made an oral request, which was orally declined. The petitioner has nowhere claimed that the DIR dated 21.04.2014 is against the facts or not filed as per the prescribed form. The petitioner seeks a writ of Certiorari against the respondents to adjudicate the impugned DIR dated 21.04.2014 along with free and fair trial in domestic violence case. The DIR is not a petition which is to be adjudicated by the Ld. MM, Mahila Court, Dwarka, New Delhi. The petitioner has nowhere in the petition claimed that the trial before the Ld.MM, Mahila Court was not free and fair. The petition is devoid of any merit.
21. In these circumstances, the petitioner is not entitled to any relief. The petition is accordingly dismissed.
22. No cost.


VINOD GOEL, J.

JULY 05, 2017
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