

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

Crl. Misc. M- 32351 of 2016 (O&M)

Date of Decision: January 23, 2018

Eshan Joshi

...Petitioner

Versus

Suman

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Hemant Bassi, Advocate with
Mr. Kewal Singh, Advocate
for the petitioner.

Mr. Umesh Aggarwal, Advocate
for the respondent.

JAISHREE THAKUR, J.

The instant petition has been filed under Section 482 Cr.P.C. for quashing of Criminal Complaint Case No.281 dated 23.12.2015 titled as “Suman Joshi vs. Eshan Joshi” (Annexure P-6) under Sections 12, 17, 18, 19, 20, 22 of Protection of Women from Domestic Violence Act, 2005 (for short 'the DV Act'), as well as all subsequent and consequential proceedings arising therefrom including order dated 08.08.2016 (Annexure P-8), pending in the court of Judicial Magistrate Ist Class, Chandigarh.

2. This is a classic case of litigation being filed by the parties against each other after their marriage turns sour and does not survive the test of time.

3. The facts that need to be noted to understand the pale of controversy herein is that parties solemnized their marriage at Bangalore on 20.01.2010. For both the parties it was their second marriage, having

children from their previous respective marriages and no children from the instant wedlock. The petitioner herein alleges that differences arose between the parties, on account of the respondent-wife (for short 'the respondent') demanding money and transfer of his assets in her name. In May 2011, the petitioner purchased apartment in Shobha Classic Apartments in the name of the respondent which was sold and a sum of Rs. 60 Lakhs has been taken by her. It is further alleged that every effort was made by the respondent herein to extort money from the petitioner, which resulted in the petitioner moving out of the matrimonial home and with the help of the police he was able to get his belongings. The respondent got FIR No.1022 registered under Sections 498-A, 506, 504 of Indian Penal Code and Sections 3/4 of Dowry Prohibition Act at police Station HSR Bangalore, in which the petitioner applied for and has got anticipatory bail. The respondent filed a complaint under the DV Act at Chandigarh on 23.12.2015 without disclosing registration of FIR No.1022 registered under Sections 498-A, 506, 504 of Indian Penal Code and Sections 3/4 of Dowry Prohibition Act at police Station HSR Bangalore. The petitioner filed a divorce petition at Bangalore on 19.03.2016 (Annexure P-9) on the ground of cruelty and also filed a reply to the complaint under the DV Act, challenging the jurisdiction of the Courts at Chandigarh. In the meantime, by the impugned order dated 08.08.2016, the Magistrate assessed interim maintenance @ Rs.75,000/- p.m. and Rs.50,000/- as litigation expenses (Annexure P-8). The petitioner herein filed a complaint at Bangalore against the respondent under Sections 420, 384, 385, 386, 389, 506 of Indian Penal Code before the Addl. Chief Metropolitan Magistrate, Bangalore. The respondent then filed an

application under Section 125 Cr.P.C. at Chandigarh, alleging that she is unemployed and has no source of income and is dependent upon her sister and brother-in-law. She also filed for execution of the impugned order dated 08.08.2016, which had allowed interim maintenance. The respondent thereafter approached the Hon'ble Supreme Court seeking transfer of the divorce petition from Bangalore to Chandigarh on 26.08.2016, which petition was dismissed on 22.03.2017. Thereafter, the petitioner filed the instant petition in the High Court on 14.09.2016. The mediation between the parties was not successful. There are also other applications that have been filed before the executing court seeking the maintenance as awarded by the JMIC, Chandigarh, in which replies have been filed by her. It would also be pertinent to note that a cancellation report of FIR No.1022 registered under Sections 498-A, 506, 504 of Indian Penal Code and Sections 3/4 of Dowry Prohibition Act at police Station HSR Bangalore, lodged by the respondent at Bangalore, has been accepted.

4. Mr. Hemant Bassi, learned counsel for the petitioner appearing along with Mr. Kewal Singh, Advocate, argues that courts at Chandigarh do not have territorial jurisdiction to entertain the very complaint itself and therefore, all proceedings thereunder are illegal and non-est. It is submitted that the respondent is neither a permanent resident of Chandigarh nor is temporarily residing here and the instant complaint has been preferred only to harass the petitioner. It is argued that in the complaint itself it is mentioned that her minor son (from her earlier marriage) is studying at Bangalore, and therefore, it cannot be said that the respondent is a resident of Chandigarh and can invoke the jurisdiction of the courts here. It is further

submitted that no cause of action arose at Chandigarh and there is no report of the Protection Officer available on the record. It is argued that before passing of an order on any application under the DV Act, the Magistrate has to take into consideration the domestic incident report received from the Protection Officer or Service Provider as envisaged under Section 12 of the DV Act. Moreover, divorce petition is also pending at Bangalore and the transfer petition filed by the respondent in the Hon'ble Supreme Court has been dismissed. Learned counsel further argues that the respondent was duty bound to disclose the material fact that she had got an FIR No.1022 registered under Sections 498-A, 506, 504 of Indian Penal Code and Sections 3/4 of Dowry Prohibition Act at police Station HSR Bangalore, and non -disclosure would disentitle her to any relief. It is also submitted that once aforesaid FIR lodged by the respondent at Bangalore under Sections 498-A, 506, 504 of Indian Penal Code and Sections 3/4 of Dowry Prohibition Act stood cancelled, the instant complaint filed under the DV Act per se would not be maintainable. It is also submitted that the respondent would be entitled to maintenance only if she can prove that she is unable to support herself, but statement of account shows that she has been earning substantially and has enough funds to sustain herself as she also has received a sum of Rs 60 lakhs from the sale of a flat which was bought by the petitioner in her name.

5. Per contra, Mr. Umesh Aggarwal, learned counsel appearing on behalf of the respondent argues that the petition itself is not maintainable, on account of the fact that the petitioner has not availed of the remedy of filing an appeal under Section 29 of the DV Act. It is submitted that the

proceedings under the DV Act have been initiated after filing of the written statement therein and therefore, the petitioner, at this juncture, is not entitled to seek quashing of the same. It is also argued that the respondent can avail of the remedy available under Sections 498-A, 506, 504 of Indian Penal Code and Sections 3/4 of Dowry Prohibition Act as well as under the DV Act. Under the FIR, the respondent had alleged cruelty on account of demand of dowry, whereas under the DV Act, the relief sought is for maintenance etc. It is further argued that the maintenance as awarded is only interim maintenance based on the financial capacity of the petitioner, which is not on the excessive side. It is also submitted that the courts at Chandigarh would have jurisdiction to entertain the complaint, since the petitioner is residing within the territorial jurisdiction of the courts at Chandigarh, along with her sister and brother-in-law. Her son is now admitted in a local school herein within the tricity of Chandigarh. It is further submitted that dismissal of the transfer application, seeking transfer of the divorce petition from Bangalore to Chandigarh, could not be read as a bar to the proceedings being instituted here within the jurisdiction of the courts at Chandigarh.

6. I have heard learned counsel for both the parties and with their assistance have gone through the complaint and the numerous applications filed therein along with case law relied upon.

7. Admittedly, a marriage has been performed between the parties and out of this wedlock, there is no issue. A perusal of the pleadings shows that there is bitter litigation between the parties with each filing various complaints and lodging FIRs against each other at various places.

8. This court is seized of the following questions;

- i) Whether the instant petition is maintainable in its present form?
- ii) Whether the courts here at Chandigarh would have territorial jurisdiction to entertain the instant complaint under the DV Act?
- iii) Whether there has been concealment of facts regarding the pendency of FIR No.1022 registered under Sections 498-A, 506, 504 of Indian Penal Code and Sections 3/4 of Dowry Prohibition Act at police Station HSR Bangalore by the respondent and whether such concealment would dis-entitle the respondent to any relief ?
- iv) Whether the proceedings under the DV Act could be initiated without a report of Protection Officer?

9. An argument has been raised by the counsel for the respondent that the present petition is not maintainable in its present form since, the petitioner has not availed of his remedy of appeal under Section 29 against the impugned order dated 08.08.2016. The argument as raised, might be sustainable in case the petitioner had challenged only the order qua maintenance, whereas the petitioner has in fact challenged the very complaint itself along with consequential proceedings including the impugned order, on the grounds of territorial jurisdiction of the courts at Chandigarh to entertain the complaint, concealment of material fact and issuance of notice without first calling for a report on domestic violence.

10. The Hon'ble Supreme Court in **Dhariwal Tobacco Products**

Limited and others vs. State of Maharashtra and another, (2009) 2 Supreme Court Cases 370, was seized of the question whether an application under Section 482 of Code of Criminal Procedure, 1973 (for short 'the Code') can be dismissed on the grounds that an alternative remedy of filing a revision petition under Section 397 of the Code is available. In the aforesaid case, company and its Directors were summoned by the JMFC Akkalkot, Solapur under the provisions of Prevention of Food Adulteration Act. An application was filed under Section 482 of the Code against the said summoning order, which was dismissed by the High Court on the ground that there was an alternative remedy of filing a revision petition under Section 397 of the Code. That order was challenged before the Apex Court and after taking note of settled case law, it was held that the High Court has inherent power under Section 482 of the Code, even though there is an alternative remedy available. Similarly in **Krishnan vs. Krishnaveni and another, 1997(1) RCR (Criminal) 724**, it has been held that a High Court under its inherent powers under Sections 482 and 483 of the Code, is justified in interfering with an order, which would lead to miscarriage of justice and can interfere, even though remedy of appeal/revision has not been availed of. Since the petitioner is seeking to challenge the very complaint, itself being without jurisdiction under Section 482 Cr.P.C., the High court with its vast inherent powers would be able to entertain this petition to ensure there is no abuse of the process of law. Therefore, this question is answered against the respondent.

11. Section 27 of the DV Act reads as under:-

“Jurisdiction - (1) The Court of Judicial Magistrate of

the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which --

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.”

Learned counsel appearing on behalf of the petitioner argues that a bare reading of the said Section would show that only such courts are competent to entertain a complaint where the aggrieved person/respondent permanently or temporarily resides or carries on business or is employed, or where cause of action arises. It is argued that merely on account of the fact that the respondent herein is temporarily residing with her sister, the court at Chandigarh would not have jurisdiction to entertain the complaint. In this regard, reliance has been placed upon judgment rendered by the Apex Court in **Advocate Ramesh Mohanlal Bhutada and another vs. State of Maharashtra and others, 2012(1) RCR (Cr.) 461**, in which it has been held that meaning of expression “resides” in Section 12 implies something more than a casual stay and implies some concrete intention to stay at a particular place, and **not merely to pay a casual or flying visit**. It is argued that the complaint itself would reveal that the son of the respondent is studying at Bangalore, therefore, there is no occasion for her to invoke the jurisdiction of the courts at Chandigarh.

12. Per contra, learned counsel appearing on behalf of the respondent argued that the parties were residing at Bangalore, when a matrimonial dispute arose and at that time the son of the respondent was studying at Bangalore and in order not to disrupt his studies, he was allowed to continue the study at Bangalore. As of now, he is studying within the local jurisdiction of the tricity of Chandigarh.

13. The question regarding territorial jurisdiction has been raised before several High Courts in **Hima Chugh vs. Pritam Ashok Sadaphule & Ors, 2013(19) RCR (Criminal) 161, Sharad Kumar Pandey vs. Mamta Pandey, 2010(7) RCR (Criminal) 1389, Rabindra Nath Sahu and another vs. Smt. Susila Sahu, 2017(1) RCR (Criminal) 312, Vikas Rastogee vs. State of U.P. and another, 2014(16) RCR (Criminal) 73. In Hima Chugh and Sharad Kumar Pandey(supra), Delhi High Court has held that temporary residence means where an aggrieved person is compelled to take shelter or to take job or do some business, in view of domestic violence within her matrimonial home. However, temporary residence does not include residence in a lodge or hostel or an inn or taking up residence at a place only for filing a domestic violence case. It must not be a fleeting residence, where a woman comes only for contesting the case and otherwise does not reside there. In Rabindra Nath Sahu and another (supra) Orissa High Court has held that temporary residence includes a place where an aggrieved person was compelled to reside in view of commission of domestic violence, where she may not have decided to reside permanently or for a considerable length of time, but for the time being. In Vikas Rastogee (supra) Hon'ble Allahabad High Court has held that**

aggrieved person can initiate proceedings from temporary residence and that question of temporary residence is a mixed question of law and fact and cannot be decided by Revisional Court.

14. Section 27 of the DV Act permits a Court to entertain a complaint of a person residing temporarily within its jurisdiction. Needless to say that after being subjected to domestic violence, it may not be possible for a woman to reside within the same jurisdiction as where the incident of domestic violence occurred and would shift and relocate to a place where she can reside/pick up a job or has some support, be it with her parents or near kith and kin. In the instant case, the respondent is residing with her sister, a close kith and kin after she left Bangalore and her matrimonial home. The son of the respondent is now studying within the tricity of Chandigarh, as would be evident from the school fee receipts that have been annexed. The argument raised that son of the respondent was studying in Bangalore and residence in Chandigarh is fleeting, is not sustainable. The minor child was studying and stayed in Bangalore only to complete his session and not be shifted midterm. Therefore it cannot be said that the respondent is residing with her sister only on account of filing of complaint under the DV Act and courts at Chandigarh would not have jurisdiction to entertain the complaint.

15. The third question that would arise for consideration is whether concealment of fact regarding pendency of the FIR at Bangalore would disentitle the respondent to any relief under the proceedings initiated under the DV Act?

16. Section 498-A of Indian Penal Code was incorporated in the

Indian Penal Code in the year 1983 when there arose a need to protect women against cruelty inflicted upon her, by her husband and member of his family, on account of bringing inadequate dowry. Despite the protection granted to women on account of inadequate dowry, a woman is subjected to various other abuses within the home, which necessitated introduction of The Protection of Women from Domestic Violence Act, 2005. As per Section 3, the term '*domestic violence*' is wide enough to include physical abuse, sexual abuse, verbal abuse, emotional abuse or even economic abuse within the matrimonial home. The scope and ambit of domestic violence is much wider than cruelty as envisaged under Section 498-A of IPC. At this juncture, it would be pertinent to take note of the fact that the reliefs sought for under the DV Act as provided under Sections 12, 17, 18, 19, 20, 21, 22 of the DV Act are reliefs, which are not available under Sections 498-A of Indian Penal Code. In the instant case, an FIR had been instituted under Sections 498-A, 506, 504 of Indian Penal Code, which provisions would not have provided respondent with the right to get relief of residence, maintenance, compensation, custody etc. Therefore, this court is of the opinion that non-mentioning of the aforesaid FIR does not amount to concealment of material fact, which would dis-entitle the respondent to claim relief under the DV Act, as the relief claimed is entirely different. Therefore, this question is answered against the petitioner.

17. An another argument has been raised by counsel for the petitioner that the Magistrate at Chandigarh could not have issued notice, without taking into consideration any domestic incident report by him from the Protection Officer or the Service Provider. It is argued that on receipt of

a complaint, the Magistrate was duty bound to send for a report of any domestic incident before issuing notices.

18 Section 12 of the DV Act is reproduced as under;-

“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.”

Chapter IV of the DV Act pertains to the procedure as to be followed by the Magistrate to grant relief to an aggrieved person. Under Section 12 of the DV Act, an application has to be presented by an aggrieved person, either by the person herself or a Protection Officer or any other person on behalf of the aggrieved person to the Magistrate, seeking relief as provided under the DV Act. A proviso has been added to Section 12(1) of the Act, that before passing any such order on any application received, the Magistrate *shall* take into consideration any domestic incident report received by him from the Protection Officer or the Service Provider. Section 9 of the DV Act entails the duties and functions of a Protection Officer, whose primary duty is to assist the Magistrate in the discharge of his functions under the Act, to make a domestic incident report to the Magistrate in the form prescribed, upon receipt of a complaint of domestic violence, while forwarding copies of the complaint 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, as well as to the Service Provider. Section 9(2) of the DV Act further provides that 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. Moreover, Section 4 of the DV Act provides that any

person, who has reasons to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.

19. On a conjoint reading of Sections 9 and 12 of the DV Act it is manifestly clear that it is duty of the Protection Officer to work under the control and supervision of the Magistrate and to perform duties imposed upon him by the Magistrate and in case, he has received a complaint on domestic violence then, to make a domestic incident report and submit it to the Magistrate, as well as to forward copies of the complaint to the Police Officer in charge of the police station within local limits of whose jurisdiction, domestic violence is alleged to have been committed. The proviso added to Section 12(1) of the DV Act is only to the effect that in case a domestic incident report has been received by the Magistrate, the same *shall* be considered before passing any order on an application received. Section 12 of the DV Act *per se* does not hold that a Magistrate on receipt of complaint is obligated to call for a domestic incident report, before passing any order on an application.

20. In the case of **Abhiram Gogoi vs. Rashmi Rekha Gogoi, (2011) 4 Gau LR 276**, it was held by Hon'ble Gauhati High Court that it is not mandatory for a Magistrate to obtain a domestic incident report before the Magistrate passes a maintenance order under Section 18 of the DV Act. A similar view was taken by the Hon'ble Delhi High Court in the case of **Shambhu Prasad Singh vs. Manjari, 2012 SCC Online Del 1371**, that receipt of domestic incident report is not a pre-requisite for issuing a notice to the respondent. Insistence to take into consideration the domestic incident

report of protection officer would not apply at the stage of initiation of enquiry under Section 12 of the DV Act, because a Magistrate, on the basis of an application supported by affidavit, on being satisfied can even grant ex parte orders in favour of the aggrieved person under Sections 18, 19, 20, 21 or 22 of the DV Act. Even this High Court in the case **Jagdish Kumar Bakhri vs. Manju Bakhri, 2012 SCC Online P&H 395**, observed that a bare perusal of Section 12 of the DV Act would signify that it is not mandatory for the Court to call for domestic incident report on each and every date of hearing, before passing any order. If no domestic report is received in the court, then in such eventuality, there is no bar for the court to pass an order under Section 12 of the DV Act. The judgment relied upon by the counsel for the respondent in the case of **Dharmendra and others vs. State of M.P. and another, 2014 SCC Online MP 5388**, is contrary to the judgments referred to by this court. On a reading of the judgment, this court is not inclined to concur with the same. In the said case, it has been held as under;-

“On bare perusal of the aforesaid provision, it becomes clear that before passing an order on application, the Magistrate has to take into consideration the domestic incident report received from Protection Officer or Service Provider. The order reveals that learned Magistrate before issuing notice to the petitioners did not even consider the contents of the application. Section 12 of the Act clearly provides for obtaining domestic incident report. The domestic incident report proforma is given in form 1 of the schedule 2 of Domestic Violence Rules. This

proforma is in detailed analytical form wherein the details of each incident of domestic violence are to be entered with date, time and place of violence and person who caused domestic violence. The object is that all allegations made in application must be specific and the Court should not exercise jurisdiction without considering domestic incident report since it is necessary for the Court to know before issuing any notice to petitioners as to who were the petitioners who caused domestic violence and what was the nature of violence and when it was committed. The proforma specifies different heads of physical violence, sexual violence, verbal and emotional abuse, economic violence, dowry related harassment and other forms of violence. The proforma also provides for filing of documents in support of the application like medico-legal certificate, list of stridhan and other documents. This domestic incident report has to be signed by the aggrieved person. The application under Section 12 is required to be made in form 2 of the Rules wherein the details of various kinds of reliefs and expenses are to be given. Section 27 of the Act provides which judicial Magistrate Court can have jurisdiction to entertain an application under Section 12 of the Act.”

As already discussed above, proviso to Section 12(1) only stipulates that the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider. Section 12(1) does not directly stipulate that a report ‘shall’ be

called for, before any relief can be granted. The judgment as relied upon does not interpret the proviso to Section 12(1).

21. Admittedly, in this case, no Domestic Incident Report either from the Protection Officer or from the Service Provider was received by the learned Magistrate. In such circumstances, when there was no report before the learned Magistrate to consider, then there was no illegality, impropriety or irregularity in passing the said impugned order. Moreover, courts cannot lose sight of the fact that these legislations have been enacted as a measure of social legislation and to provide succor to an aggrieved person. At times, considerable length of time may lapse before a report is received, when the domestic incident took place in a different state. Waiting in the interim before granting of relief might frustrate the object of the Act to provide instant interim relief. Accordingly, this question is also answered against the petitioner.

22. It is also argued that the maintenance as awarded vide order dated 8.8.2016 is on the higher side, since the petitioner is unemployed. It is also submitted that the petitioner had purchased a flat in the name of the respondent, which was subsequently sold and in fact respondent has already received a sum of Rs.60 lakhs, which is more than adequate to meet daily expenses. It is urged that she has also worked as would be reflected in her statement of accounts which fact has not been disclosed.

23. The order dated 08.08.2016 has assessed interim maintenance at Rs.75,000/- per month. No doubt, under the DV Act, the Magistrate is competent to award maintenance to a wife as an interim measure till the final disposal of the case. Needless to say, final maintenance is yet to be

assessed, which would be dependent on various factors. The Magistrate is duty bound to consider the financial status of the petitioner, whether he is employed, his liabilities, as well as whether the respondent is financially supporting herself, before any final orders are issued. These factors will be taken into consideration based on evidence adduced by either party. The income tax returns that have been furnished in these proceedings would reflect that the petitioner is a person of adequate means and therefore at the present moment this court is not inclined to interfere in the impugned order.

24. The argument raised that the respondent has received Rs. 60 lakhs after sale of property and has adequate means to support herself is an argument not sustainable at the present moment. The respondent has submitted that the amount is lying in a bank account untouched. It still has to be considered by the courts below, as to whether the sale of property and receipt of the sale consideration would be barred under The Benami Transactions (Prohibition) Act, 1988?

25. In view of the foregoing discussion, the petition in hand is hereby dismissed, being devoid of any merits. Before parting with this judgment, it is made clear that any observation made by this court hereinabove is only for the purpose of deciding the instant petition and shall have no affect on the merits of the case.

January 23, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No