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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 23rd August, 2018

+ CRL.M.C. 3449/2016 and Crl. M.As 14570/2016, 15478/2017
and 3245-3246/2018

PRADEEP SURI

..... Petitioner

Through: Dr. Ashutosh, Advocate

versus

STATE & ANR.

..... Respondents

Through: Mr. Ravi Nayak, APP for the State

Ms. Sunita Arora, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The second respondent had filed a petition (CC no.12/1/13) in the court of the Metropolitan Magistrate invoking its jurisdiction under Section 12 of the Protection of Women from Domestic Violence Act, 2005 impleading the petitioner herein as the first respondent, this in addition to various other persons, they including his brothers, their wives, sister and her husband, making allegations of they having subjected her to a series of incidents constituting domestic violence within the meaning of the expression used in the said law, she seeking reliefs, *inter alia*, in the nature of protection orders under Section 18, residence order under Order 19, monetary relief in the nature of

maintenance under Section 20, unrestricted custody of the three children of the parties under Section 21 and compensation in the sum of Rs.15 Lakhs for mental torture and emotional distress under Section 22. The Metropolitan Magistrate, by order dated 08.12.2015, took cognizance on the said petitions, also perusing the domestic incident report (DIR) and, thereafter, directed the petitioner to be called, issuing process against him for appearance calling upon him to respond including by filing an affidavit as to his income.

2. The petitioner had approached the Metropolitan Magistrate by an application seeking modification of the impugned order dated 08.12.2015, on the ground that material facts had been concealed and that the petition under Domestic Violence Act had suffered from laches but the said application was dismissed.

3. The petitioner challenged the above said orders by criminal appeal (no.4/2/16) in the court of Sessions. His appeal was dismissed by the Additional Sessions Judge by order dated 07.06.2016 with observations that it was devoid of merits.

4. The petitioner has thereafter approached this court under Section 482 of the Code of Criminal Procedure, 1973 (Cr. PC) seeking quashing of the said proceedings on the ground they are abuse of the process of law.

5. Having heard both sides and having gone through the record, this court finds no merit in the petition.

6. The prime contention of the petitioner is that the second respondent with whom he had got married on 15.02.1997 had left the matrimonial home on 23.12.2007 where-after she had lodged a complaint with police on 24.12.2007. He alleges that his father was killed by the father and brothers of the second respondent on 31.12.2007 which led to the FIR (no.831/2007) being registered leading to the said relatives of the second respondent being arrested and put on trial. It is his allegation that efforts were made to coerce the witnesses in the said case to turn hostile. He submits that the second respondent had filed an application under Section 125 of the Cr. PC seeking maintenance allowance to be granted which petition (registered as case no.314/4) resulted in award of the interim maintenance allowance by the Metropolitan Magistrate by order dated 27.05.2011.

7. The reliefs which are claimed by the second respondent through the petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 arise out of a continuing cause of action. In the said forum, as indeed in the present proceedings, this court cannot subject to scrutiny the allegations about the petitioner's father having been intentionally killed by the close relatives of the second respondent. That is a matter which will have to be adjudicated upon only by the concerned criminal court. For the present, the facts remains that the second respondent is the estranged wife of the petitioner, who is alleging that she has been subjected to a series of acts of commission and omission by the petitioner, such facts *prima*

facie constituting it to be a case of domestic violence. The fact that a separate petition under Section 125 Cr. PC was filed to seek maintenance allowance to be awarded may have a bearing on the claim in the petition at hand for maintenance allowance. But, as noted earlier, the petition before the trial court makes prayer for reliefs that go beyond the one for maintenance allowance. It cannot be assumed, not the least on mere averments of the petitioner, that the claim of the second respondent about domestic violence is wholly unfounded. Her allegations would need to be put to trial after, of course, taking into account the reply of the petitioner as indeed the evidence that is led in support.

8. The cases *Harbans Lal Malik and ors. vs. Payal Malik*, 2010 VII AD (Delhi) 208; *Vijay Verma vs. State of NCT of Delhi and Anr.*, 2010 (4) JCC 2377 and *Poonam Vs. V.P. Sharma*, 2014 (3) JCC 2087 cited at bar do not assist the petitioner.

9. The petition and the applications filed therewith are dismissed.

R.K.GAUBA, J.

AUGUST 23, 2018

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