



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2019

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Cr1.O.P.(MD)No.23045 of 2015 and

M.P.(MD)Nos.1 and 2 of 2015

Ramanujam

... Petitioner/Respondent

Vs.

Rajammal

... Respondent/Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records in Cr.M.P. No.1683 of 2015 on the file of the Judicial Magistrate, Aundipatty, Theni District and quash the same.

For Petitioner : Mr.R.Shankar Ganesh
For Respondent : Mr.B.Jeyakumar

O R D E R

The petitioner herein is shown as the respondent in Cr.M.P.No.1683 of 2015 filed by the respondent herein before the Judicial Magistrate, Aundipatty, Theni District, under Section 12 of the Protection of Women from Domestic Violence Act.

2. The petitioner's counsel submitted that the impugned proceedings have to be quashed on the ground of limitation.

3. I am unable to agree with the said submission of the petitioner's counsel. A learned Judge of this Court has followed the decision of the Hon'ble Supreme Court reported in (2011) 12 SCC 588 (Inderjit Singh Grewal Vs. State of Punjab and another). The very same decision was cited before me in Cr1.O.P.(MD)No.10110 of 2011 vide order dated 28.08.2018. I rejected the said contention in the following terms:

8.This court anxiously considered the rival contentions. The plea of limitation put forth by the learned Senior Counsel for the petitioners for quashing the proceedings initiated by the respondent under Section 12(1) of the Protection of Women from Domestic Violence Act, 2005 can be taken up first. As pointed out by the learned Senior Counsel, the Hon'ble Supreme Court in the decision reported in (2011) 12 SCC 588 (Inderjit Singh Grewal vs. State of Punjab and another) held as follows :

"32. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 CrPC, that the complaint could be filed



only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Sections 28 and 32 of the 2005 Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006 which make the provisions of CrPC applicable and stand fortified by the judgments of this Court in *Janani Sahoo v. Chandra Sekhar Mohanty* and *NOIDA Entrepreneurs Assn. v. NOIDA*."

It is also true that the said decision was followed by the Patna High Court in the decision reported in 2018 CRL.LJ.1553 (*Santhosh Kumar vs. State of Bihar*) which held as follows :

"17.The law declared by the Supreme Court has got binding force and, in that view of the matter, it can safely be said that the provisions of Section 468 of the Cr.P.C. would clearly be applicable in cases instituted under the provisions of the D.V. Act."

9.Before I answer the point of limitation raised by the petitioners' Senior Counsel, I deem it relevant to place on record that the SCC reporting of *Inderjit Singh Grewal* was accompanied by the following editorial note "a conclusive view on this issue does not seem to have been expressed - Probably, since complaint under Section 12 was found to be not maintainable on other grounds." *Inderjit Singh Grewal* was referred to in a subsequent decision of the Hon'ble Supreme Court reported in (2016) 2 SCC 705 (*Krishna Bhattarchgee vs. Sarathi Choudhury*) in the following terms :

"It has been held in *Inderjit Singh Grewal* that Section 468 of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under Sections 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the same as we are of the considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under Section 12 of the 2005 Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. The concept of "continuing offence" gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act."

The appeal filed by the wife was allowed and the



orders passed by the High Court and the courts below were set aside.

10. It is true that Section 28 of the Central Act 43 of 2005 states that all proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 shall be governed by the provisions of Code of Criminal Procedure, 1973. Therefore, applicability of Cr.PC to a proceeding initiated under Section 12 of the D.V act 2005 cannot be in doubt. But, now the question is whether Section 468 of Cr.PC can be said to apply to a petition filed under Section 12 of the D.V Act, 2005. Section 468 of Cr.PC engrafts a bar to taking cognizance after lapse of the period of limitation. Chapter 36 of Cr.PC which includes Section 467 to 473 bears the title "Limitation for taking cognizance of certain offences". Therefore, this Chapter and particularly Section 468 of Cr.PC cannot have any bearing or applicability in respect of proceedings which do not deal with taking cognizance of offences.

11. Section 31 of the Central Act 43 of 2005 prescribes penalty for breach of protection order by the respondent. Section 33 embodies penalty for not discharging duty by Protection Officer. Therefore, Section 468 of Cr.PC will come into play when cognizance is sought to be taken in respect of offences set out under the Protection of Women from Domestic Violence Act, 2005. When a person aggrieved seeks certain reliefs under provisions such as 12, 18, 19, 20, 21 and 22 etc., she does not call upon the court concerned to take cognizance of any offence committed by the opposite party. She only wants certain reliefs to be ordered in her favour. Therefore, respectfully following the later decision of the Hon'ble Supreme Court reported in (2016) 2 SCC 705 (Krishna Bhattarchgee vs. Sarathi Choudhury), I hold that Section 468 of Cr.PC does not apply to a petition filed under Section 12 of the Prevention of Women from Domestic Violence Act, 2005. Hence, the contention raised by the learned Senior Counsel appearing for the petitioner deserves to be negatived."

4. Therefore, I am unable to agree with the contention of the petitioner's counsel. The other contentions urged by the petitioner's counsel are factual in nature. Therefore, the petitioner will have to necessarily establish his defence only before the Court below.

5. In this view of the matter, the criminal original petition stands dismissed. The petitioner is aged 72 years. Therefore his personal appearance before the Court below is dispensed with.



6. The learned trial Magistrate shall insist on the personal appearance of the petitioner only when it is absolutely necessary and imperative. On all other occasions, the petitioner can be represented through his counsel. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pmu

To:

1. The Judicial Magistrate,
Aundipatty, Theni District.
 2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- +1 CC to M/s.R.SHANKAR GANESH, Advocate (SR-103554[F]

Cr1.O.P.(MD)No.23045 of 2015

04.12.2019

SMA/19/06/2020/4P/4C