

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

CRM M-36623 of 2018
Date of Decision: September 13, 2019

Sukhpal Kaur and anotherPetitioners
Versus
Sukhwinder Kaur and another Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Siddarth Gupta, Advocate
for the petitioner.

FATEH DEEP SINGH, J. (Oral)

Petitioners Sukhpal Kaur and Meharbaan Singh have challenged through this petition under Section 482 of the Code of the Criminal Procedure notice dated 15.06.2018 (Annexure P-7) and sought quashment of criminal complaint (Annexure P-5) filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short, 'the Act') preferred against them by the respondents.

Upon hearing the counsel for the two sides, no doubt under Section 28 of the Act, the proceedings in such a complaint (which is a misnomer and is actually an application)

are to be conducted in consonance with the Code of the Criminal Procedure though the Court may for the disposal of the application under Section 12 of the Act adopt its own procedure. Section 29 of the Act mandates that any order passed by a Magistrate under the Act is appealable. In the present case, the order dated 15.06.2018, is nothing but the initial order whereby report from the Protection Officer has been called for for the next date, i.e., 23.07.2018 and, therefore, to the mind of this Court, the Court is yet to take cognizance of the averments and drawing analogy from Section 204 of Cr.P.C. where a Magistrate forms an opinion for taking cognizance of an offence holding that there is sufficient grounds for proceedings which can do so by issuing process to the concerned person who has to be heard. It is only in compliance of the requirements of Section 12 of the Act as long as report has not received and the Magistrate does not take cognizance of the averments in the complaint, it would be too preposterous to come up challenging such a process. The learned counsel for the petitioner could not bring about how the same is necessitated challenge to such an order. Furthermore, Section 482 Cr.P.C. is an exceptional rarity for the Court to exercise its inherent powers to meet the ends of justice where there is imminent and cogent need to do so. This Court holds the view that by means of exercise of power under Section 482 Cr.P.C. without there being any sufficient reasons thwarting such a process that has been set into motion by the

Court would be highly prejudicial. Furthermore resort can be had to the provisions of Section 25 of the Act for recalling of an order passed by a Magistrate where a party feels aggrieved. Thus, no cause to show indulgence is made out.

The petition as such stands dismissed.

September 13, 2019
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No