

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4728/2019

ROHIT SHANKER OJHA PETITIONER

VERSUS

MEERA ROHIT OJHA & ANR. RESPONDENTS.

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Mr. Avinash B. Patil, Advocate for the petitioner.

Mr. Shivamsinh Deshmukh, Advocate i/b Aarati Deshmukh, for
respondent no.1.

Mr. R.M.Pethe, APP for State.

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CORAM : A. M. BADAR, J.

DATE: 30TH JANUARY 2020.

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JUDGMENT:

1. By this petition under Section 482 of the Criminal Procedure Code, the petitioner/husband/original respondent in application under Section 12 of the ‘Protection of Women from Domestic Violence Act, 2005’ (‘D.V.Act for brevity’) is praying for quashing the proceedings in the application u/s 12

of the D.V.Act which is registered as C.C. No.162/DV/2018 and which is pending before learned Metropolitan Magistrate, 44th Court, Andheri Mumbai.

2 Rule. Heard forthwith.

3 Learned counsel appearing for petitioner/original respondent vehemently argued that complaint under D.V. Act is barred by limitation as prescribed by Section 468 of the Criminal Procedure Code. To buttress this contention, he relied on the Judgment of learned single Judge of **Patna High Court in the matter of Santosh Kumar Vs. The State of Bihar and Another, 2019(3) PLJR 567.** Learned counsel further argued that the respondent herein/applicant is permanent resident of Patna and by showing that she is residing with her elder brother at Mumbai she has filed a complaint under D.V. Act in the Court of learned Metropolitan Magistrate at Mumbai. Said Court has no territorial jurisdiction to entertain

the complaint as respondent no.1/wife/aggrieved person is resident of Bihar. It is further argued that Information petitions filed in the Court at Patna by both parties reveals that the petitioner herein/husband was willing to co-habit with respondent herein. It is further urged that the pleadings in application under Section 12 of the D.V. Act are reflecting facts which are inherently improbable. My attention is drawn particularly to paragraph 10 of the application under Section 12 of the D.V. Act to demonstrate that false allegations are made by husband against wife and therefore, proceedings needs to be quashed and set aside.

4. Learned counsel appearing for respondent no.1/aggrieved person/wife has argued that as the 'Stridhan' is with husband, there is continuous cause of action and therefore, limitation as prescribed by Section 468 of the Criminal Procedure Code is still available with the wife to initiate the complaint.

5. I have considered the submissions so advanced and also perused the material placed before me.

6. At the outset, let us examine whether Section 468 of Criminal Procedure Code is applicable to the proceedings under D. V. Act. It is well settled that proceedings under the D.V. Act are quasi civil proceedings enacted for the purpose of welfare of subject of the said Act. Only offences which can be found to have been enacted under D.V. Act are offences prescribed in Section 31 and 33 of the said Act. Breach of protection order or interim protection order by respondent is considered as offence under Section 31 of the D.V. Act for which punishment prescribed is upto 1 year or that of fine. Section 33 of the D.V. Act provides that if protection officer fails or refuse to discharge his duty as directed by the Magistrate then he makes himself liable for punishment of either description for a term which may extend to one year, or with fine. Except these two provisions,

there is no other provision in the D.V. Act which deals with commission of offence and punishment for the same.

7. As per provisions of Section 12 of the D.V. Act an aggrieved person is permitted to file an application to the learned Magistrate seeking one or more reliefs under the D.V. Act. Further provisions of Section 12 of the D.V. Act deals with jurisdiction of the Court. Practically Section 12 of the D.V. Act is enabling provision to file application whereas Section 18 to 22 thereof provides for rights of an aggrieved person to seek different reliefs like protection, residence, mandatory reliefs, custody of minor and compensation. For all such reliefs when provisions of the Code are to be followed then practically there is no limitation prescribed under the Code for claiming and grant of such reliefs. Therefore, it is quite clear and certain that Section 468 of the Criminal Procedure Code is not applicable to the provisions of this welfare legislation dealing which grant of several reliefs

to the aggrieved persons. When there is no incident of commission of offence while applying provision of Section 12 of the D.V.Act, for seeking reliefs u/s 18 to 22 of the D.V.Act then, it can not be said that Section 468 of the Criminal Procedure Code is applicable to de-bar subject of welfare legislation for taking recourse to provisions of the D.V. Act. Hence, as the case in hand is that of an application u/s 12 of the D.V.Act preferred by respondent no.1/wife/aggrieved person for claiming various reliefs under D.V.Act, she can not be thrown out of the Court with observations that her application is barred by limitation as prescribed by Section 468 of the Criminal Procedure Code.

8. It is urged that the respondent/aggrieved person/wife is resident of Patna and therefore, she can not validly maintain her application u/s 12 of the D.V.Act in the Court of Mumbai. Section 27 of the D.V.Act deals with the jurisdiction of learned Magistrate while dealing with

application u/s 12 of the D.V.Act. Learned Magistrate is competent to entertain such application provided the aggrieved person at least temporarily resides or carries on her business within her territorial jurisdiction. In case in hand, application under Section 12 of the D. V. Act shows that respondent herein/aggrieved person is residing at Andheri, Mumbai. In paragraph 20 of the said application, she has categorically contended that she is resident of Andheri, Mumbai and therefore, learned Magistrate has the jurisdiction to entertain her complaint. Any contrary, averments in this regard will have to be examined and decided during the trial and not in proceedings under Section 482 of the Criminal Procedure Code.

9. So far as contention of the petitioner herein that averments in application u/s 12 of the D.V. Act are inherently improbable, while dealing with the petition u/s 482 of the Criminal Procedure Code, by conducting mini trial such

contention can not be tested. Perusal of application u/s 12 of the D.V. Act, preferred by the respondent herein shows that, there are averments regarding domestic relationship between the parties so also, that of domestic violence.

10. In this view of the matter, it can not be said that proceedings pending on the file of learned Magistrate amounts to abuse of process of the Code or that in the interest of justice such application deserves to be quashed.

11. In the result the petition fails and therefore, same is dismissed.

12. Needless to mention that these observations are prima facie in nature and shall not have bearing on the proceedings of the trial court.

(A. M. BADAR, J.)

