

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Crl.M.C. No. 509/2019 and Crl.M.A. No. 2172/2019 (Stay)**

Order reserved on : 11.10.2019 and
27.05.2020

Date of decision : 12.06. 2020

DHARMA ROHILLA & ORS. Petitioners
Through: Mr. Praveen Suri, Advocate
versus

SAROJ Respondent
Through: Ms.Vipra Bhardwaj, Advocate

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioners vide the present petition under Section 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India have assailed the impugned order and judgment dated 11.12.2018 in Crl. Revision No.458/2018 of the learned Additional Sessions Judge (SFTC) District-South West, Dwarka Courts, New Delhi which upheld the summoning order dated 12.9.2018 of the learned Metropolitan Magistrate (Mahila Court)-02, South West, Dwarka in CC No. 26903/2018. The petitioners thus seek that the judgment dated 11.12.2018 of the learned Additional Sessions Judge (SFTC) and the summoning order dated 12.9.2018 of the Court of the learned Metropolitan Magistrate-02 (Mahila Court), South West, Dwarka be set aside.

2. Notice of the petition was issued to the respondent and the respondent has been represented and submissions have been made on behalf of either side by their learned counsel.

3. The petitioners No.1 and 2 have professed through the petition and in the memo of parties that they, i.e., Dharma Rohilla and Sukh Devi are the father-in-law and mother-in-law respectively of the respondent Saroj W/o Ajit Kumar Rohella and that the petitioner No.3 is the younger son of the petitioners No. 1 and 2.

4. The petitioners No.1 and 2 submit that their elder son Ajit Kumar Rohella had been divorced from his first wife and later on on 1.1.2015 he (Ajit Kumar Rohella) and the respondent started living as husband and wife, though no necessary ceremonies of marriage were performed at Chirag Delhi in a marriage function which was attended only by the petitioners though they were not ready for the same. It has been submitted further through the petition that the petitioners did not accept the marriage and that the petitioner No.2 is the owner of property bearing No. RZF-946, Raj Nagar-II, Palam Colony, Near Heera Devi Model Public School, New Delhi-110077 and she had allowed her elder son, i.e., Ajit Kumar Rohella to live on the part of the second floor as rest of the floor was given on rent to the tenant. The petitioners submit that the petitioners No.1 and 2 reside on the first floor and the petitioner No.3 along with his wife and children is residing on the ground floor. The petitioners have placed on record the documents of title as Annexure P-2, i.e., *inter alia* a General Power of Attorney executed by one Samunder Singh S/o Deep Chand in favour of Dharma Rohilla, i.e., the petitioner No.1 herein in relation

to the property i.e., at Khasra No. 50/18/2, situated at Raj Nagar Part-II, Palam Colony, area of Village Palam Delhi which he had stated that he had sold to Dharma Rohilla and that he had received a consideration from him. The affidavit stating the date of sale by Samunder Singh is 16.4.1985. There are other documents in relation to the transaction i.e. the Deed of Agreement between Samunder Singh and Dharma Rohilla. In relation to the said property also placed on record is a subsequent General Power of Attorney executed by Dharma Rohilla, i.e., the petitioner No.1 in favour of the petitioner No.2 executing the power of attorney in relation to the said property.

5. The petitioners have further submitted through the petition that Ajit Kumar Rohella, elder son of the petitioners No.1 and 2 expired on 8.4.2018 and thereafter the respondent started creating trouble and a notice was thus issued to her dated 9.5.2018 revoking the licence and calling upon her to handover the peaceful and vacant possession of the part of the second floor but the respondent did not hand over the same, and thus a Civil suit was filed by the petitioner No.2 against the respondent which is pending in the Court of the learned Additional District Judge, South-West, Dwarka Court which is a suit for possession and damages and *mesne* profits, and permanent and mandatory injunction. The prayers in the said suit are to the effect:

a) Pass a decree of possession in favour of the plaintiff and against the defendant thereby, the defendant be directed to hand-over the peaceful vacant possession of /the part of Second Floor of property bearing no. RZF-946, Raj Nagar-II, Palam Colony, Near Heera Devi Model Public School, New

Delhi as shown in red colour in the site plan annexed;

b) Pass a decree of permanent injunction in favour of the plaintiff and against the defendant, its employees, agents, etc. thereby restraining the defendant not to create any third-party interest in respect of Second Floor of property bearing no. RZF-946, Raj Nagar-II, Palam Colony, Near Heera Devi Model Public School, New Delhi

c) Pass a decree of damages/ mesne profits of Rs.2000/- from 18.5.2018 till the date of filing of the suit;

d) Pass a decree of damages and mesne profits and pendent lite and future interest @ Rs.200/- per day or at any other rate at which this Hon'ble Court may deem fit and proper under Order 20 rule 12 CPC, on which the plaintiff will pay the deficient court fee at the time of passing of the decree,

d) Costs of the suit be also awarded in favour of the plaintiff and against the defendant;

e) Pass any other order, relief(s) as may be deemed fit and proper in view of the above facts and circumstances may also be passed in favour of the plaintiff and against the Defendant;"

6. The petitioners further submitted that the respondent started claiming the service benefits and other benefits of late Ajit Kumar Rohella and as there existed no proof of marriage, a Civil Suit No. 10/2018 was filed by the petitioner No.2 being the Class-I legal heir of late Ajit Kumar Rohella seeking a declaration that there existed no

valid marriage between the respondent and late Sh. Ajit Kumar Rohella on 1.1.2015 and that she was not entitled to any relief. Inter alia, the petitioners submitted that the respondent made a complaint at the CAW Cell, Nanak Pura, New Delhi and thereafter, filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act 2005 and thus the petitioners preferred the Crl.Revision Petition No. 458/2018 which petition was dismissed vide order dated 11.12.2018.

7. The petitioners submit that the impugned order dated 11.12.2018 of the learned Additional Sessions Judge, South West, Dwarka is based on surmises and conjectures and that the learned Additional Sessions Judge, South West, Dwarka, has failed to appreciate that the respondent herein was not an *aggrieved person* as per Section 2(a) of the Protection of Women from Domestic Violence Act, 2005 as there existed no relationship between them and that the property in question was not a *shared house hold*.

8. The petitioners further submitted that the learned Additional Sessions Judge, South West, Dwarka, has failed to appreciate that the property in question was in the ownership of the petitioner no. 2 and late Ajit Kumar Rohella or that the petitioner no. 3 had nothing to do qua the same and further submitted that it was only when the petitioners issued the notice to the respondent to vacate the premises that the complaint had been filed by the respondent as a counter blast. The petitioners also submitted that there existed no *domestic violence* as there existed no relationship as per Section 2(d) of the Protection of

Women from Domestic Violence Act, 2005, in as much as no marriage existed between the respondent and late Ajit Kumar Rohella.

9. The petitioners have also submitted that the premises where the respondent resides does not fall within the ambit of a shared household property in terms of Section 2(s) of the Protection of Women from Domestic Violence Act, 2005.

10. Reliance, inter alia, on behalf of the petitioner was placed on the verdict of this Court in Crl.M.C. No. 2082/2016 in **Manju Gupta V. Pankaj Gupta & Ors.**, a verdict dated 30.8.2018 to contend that where the daughter-in-law has only been granted permission to live, she cannot force herself when she has no legal vested rights to claim residence in the property and that the rights of residence in terms of Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 which reads to the effect:

"2.Definitions.—In this Act, unless the context otherwise requires,—

(s)“shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household."

can be only claimed and pressed against a husband and not against his father and that as the daughter-in-law had only a right to enjoy the occupation of a portion of the property in which she lived only through her husband and if the husband had no right on the same, the daughter-in-law cannot claim the same as a matter of right.

11. On behalf of the respondent through the reply submitted and through the oral arguments addressed, it has been submitted that the petitioners having already assailed the summoning order by way of a Crl. Revision before the Sessions Court which Criminal Revision Petition was declined vide the impugned judgment dated 11.12.2018 in Crl.Revision No.458/2018, in terms of the provisions of Section 397(3) of the Cr.P.C., 1973, the petitioners cannot seek redressal under Section 482 of the Cr.P.C to make them redundant in as much as powers under Section 397 of the Cr.P.C., 1973 can be exercised by the Sessions Court and by the High Court concurrently.

12. Section 397 of the Cr.P.C., 1973 provides to the effect:

"397:-Calling for records to exercise powers of revision.

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended,

and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

13. Reliance has thus been placed on behalf of the respondent on the verdict of this Court in **Anil Kumar & Ors. v. Moti Ram & Ors.**; 49(1993) DLT 267 with specific reference to paragraphs 10 and 11, which read to the effect:

"10. I am of the view that once a party exercises his revisional remedy he cannot invoke the inherent power of the High Court under Section 482 Cr. P.C. against those orders. Inherent powers under Section 482 cannot be invoked if there is specific provision in the Code for redressal of the grievance. In fact the High Court should refrain from exercising inherent power to interfere in the order passed under Section 397(1) of the Code at the behest of unsuccessful revisionist. The same cannot be made permissible either by exercising suo-motu

power or by invoking inherent power under Section 482 Cr.P.C.

11. If the High Court is allowed to interfere in the revisional order passed under Section 397(1) of the Code by an unsuccessful revisionist it would be derogatory to writ of prohibition issued by the Supreme Court, reference can be had to the decision in Madu Limaye's case. In fact the party which has already exhausted the remedy specifically provided by the Code, is legally disentitled to avail further remedy owing to exclusion as expressly engrafted by the Code, and attempt to encroach on the arena distinctly earmarked by the Statute. It would amount to entertaining second revision and thereby frustrating the legislative intention to secure expeditious finality."

14. The respondent has further placed reliance on the verdict of this Court in ***State (Delhi Administration) Delhi v. Kumari Tukkanna and Others***; 1984 Cri. LJ. 1866, on observations in paragraph 9 thereof to contend to similar effect:

"9. I am further of the opinion that the petition under S.482 Cr. P.C. is as well not maintainable. It is now too well settled that inherent powers of the court have to be very sparingly exercised to prevent abuse of process of court or to otherwise secure the ends of justice. It cannot be invoked if there is specific provision in the Code for the redress of the grievance of the aggrieved party. It should also not be exercised as against express bar of law engrafted in any other provision of the Code.

... In the present cases, however, the revisional powers were available and they were in fact got exercised. Once this had happened, there is no scope now available to file another revision or seek exercise of inherent powers against the orders which moreover cannot, in any manner, be treated as

abuse of process of court or otherwise require rectification or reversal to secure the ends of justice. In fact, it has been recognised in these authorities that the inherent powers are not available where specific remedy is provided for and also where express bar of law is engrafted in any other provision of the Code."

15. Furthermore, the respondent has submitted that the issuance of summons by the Magistrate ought not be interdicted at this stage as the same have been issued on a *prima facie* view and that at the stage of summoning, the Magistrate was not required to evaluate the material or evidence minutely in support of the complaint because the Magistrate at that stage does not undertake an exercise to find out whether the materials would suffice for a conviction or not.

16. Reliance was thus, placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in "***Sau Kamal Shivaji Pokarnekhar v. The State of Maharashtra & Ors.***" 2019 (3) SCALE 277 with observations therein to the effect:-

"4. ... It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. ... It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or

acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

6. Defences that may be available, or facts/ aspects which when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At that stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not.

7.

8.

9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused.... If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

17. Likewise reliance was also placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in "*Khacheru Singh v. State of U.P. and another*" (1982) 3 SCC 218 with specific reliance on the observations in para 2 thereof, which reads to the effect:-

“2. ... All that the learned Magistrate had done was to issue a summons to respondent No. 2- Satyavir Singh. If, eventually, the learned Magistrate comes to the conclusion that no offence was made out against Satyavir Singh, it will be open to him to discharge or acquit him, as the case may be. But it is difficult to appreciate why the order issuing "summons" to the accused should be quashed.”

18. *Inter alia* the respondent has submitted that the petitioners despite the disapproval or the alliance between the respondent and late Shri Ajit Kumar Rohella, had attended the marriage function and there was no compulsion to attend the same but they attended the same, which was an admission on their behalf which itself indicated that the petitioners have not come to the Court with clean hands. *Inter alia* the respondent submits that on 22.11.2017, the petitioner no.3, the brother-in-law of the respondent (i.e. the younger son of petitioner nos. 1 & 2) on behalf of all the petitioners i.e. petitioner nos. 1 & 2 and 3 gave an apology letter to the respondent that they would not trouble her again and if it ever occurs in future then the police could take action against them and that on 23.07.2018, the petitioner no.1 i.e. the father-in-law of the respondent also tendered a letter to the Inspector Ms. RenuYadav, SPUW & C, Malviya Nagar, New Delhi and to the respondent assuring her that he would not disturb her peaceful habitation at the residence. The respondent thus submits that she had been inflicted mental and physical trauma and it was the petitioner No. 1, father-in-law who submitted his letter to the police and to the respondent that he would not disturb the peaceful habitation of the respondent at her residence.

19. The respondent has further submitted that in the letter dated 22.11.2017, an apology letter sent by the petitioner no.3 he addressed her as 'Bhabhi' which itself contradicts the contention and stand of the petitioners that they did not approve of the marriage of the respondent with late Shri Ajit Kumar Rohella and that the petitioner no.1, the father-in-law in his apology letter dated 23.07.2018 has also addressed the respondent as the wife of the deceased, i.e. his son at three different occasions. The respondent has further submitted that physical and mental violence meted out to her was so extreme that the respondent was forced to seek redressal before the CAW Cell, Nanak Pura, New Delhi which she had to follow up a by complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

20. It has thus been submitted on behalf of the respondent that the observations in the impugned order dated 11.12.2018 of the learned ASJ, District South-West, Dwarka Courts, New Delhi read to the effect:-

“ Revisionists have been summoned by Ld. Trial Court on the basis of averments made by respondent in her application filed u/s 12 of DV Act. Respondent has also filed a letter written by revisionist no. 3 to SHO, Palam thereby stating that a quarrel took place between revisionists & respondent. In this letter dated 22.11.2017 revisionist no. 3 apologised for the act and undertook that he will not quarrel with respondent.

Prima facie facts of the case indicate that respondent and revisionists are residing in the same property and respondent has narrated various instances in her application u/s 12 DV Act where

she was subjected to Domestic Violence. In these facts the order on summoning of the revisionists by Ld. Trial Court cannot be faulted. There is no merit in the revision petition. Accordingly, revision petition stands dismissed.”

can thus not to be faulted with and that there existed no infirmity also in the impugned order of the learned Trial Court vide which the petitioners were summoned.

21. Reliance on the other hand was *inter alia* placed on behalf of the petitioners on a catena of verdicts to contend that the provisions of Section 482 of the Cr.P.C., 1973 are all pervasive and can always be exercised by the High Court to set aside any erroneous analysis by the subordinate Courts which caused miscarriage of justice with specific reliance having been placed on the verdict of the Hon’ble Supreme Court in “***Krishnan & Ors. Vs. Krishnaveni & Ors.***” (1997) **4 SCC 241**.

22. Reliance has also been placed on behalf of the petitioners on a catena of verdicts to contend that the place where the respondent resides, is not a shared household and that the respondent cannot seek any relief in relation thereto.

23. The judgments relied upon on behalf of the petitioners in support of all contentions raised in the petition are :

a) Prasanta Kumar Dey V. State of West Bengal and Anr.; (2002) 9 SCC 630

b) Rajinder Prasad V. Bashir & Others; (2001) 8 SCC 522

c) Hiral P. Harsora & Others V. Kusum Narottamdas Harsora & Others; (2016) 10 SCC 165

d) Jaspal Kaur Cheema & Another V. Industrial Trade Links & Others; (2017) 8 SCC 592

e) Shumita Didi Sandhu V. Sanjay Singh Sandhu & Ors.; FAO(OS) 341/2007 decided on 26.10.2010

f) S.R. Batra & Ors. V. Taruna Batra; Civil Appeal No. 5837/2006 decided on 15.12.2006

g) Bhupender Singh Mehra V. State of NCT of Delhi & Ors.; 1766/2010 decided on 08.10.2010

h) Adil & Ors. V. State & Anr.; 2010 SCC Online Del 3272

i) Satish Sharma V. State & Ors.; Crl.M.C. 2305/2008 decided on 19.8.2011

j) Rachna Khanna Singh V. Santosh S.P.Singh & Ors.; RSA no. 17/2019 decided on 24.5.2019

k) Rajeev Tandon & Anr. V. Rashmi Tandon; 2019 SCC Online Del 7336

l) Harish Chand Tandon v. Darpan Tandon & Anr.; 2015 SCC Online Del 12387

24. During the pendency of the present petition, CRL.M.A.6835/2020 was filed by the petitioners submitting *inter alia* to the effect that CA 323/19 had been filed by the petitioners before the learned ASJ, which was pending before the learned ASJ-02, South West, Dwarka, New Delhi and the proceedings of the said appeal have been deferred in view of the pendency of the present proceedings. The said proceedings before the learned ASJ-02, South West Dwarka

Courts, New Delhi are now stated to be listed for 15.06.2020 and along with this application i.e. CRL.M.A.6835/2020, vide which the petitioners had sought that orders be passed qua CRL.M.C.509/2019 or appropriate directions be issued to the learned ASJ concerned to dispose of the appeal i.e. CA 323/2019 filed by the petitioners was annexed the copy of the appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 against the order dated 3.7.2019 in CC No.26903/2018.

25. The said order dated 03.07.2019 which is presently under challenge before the learned ASJ in CA 323/19, reads to the effect:-

“CC No.26903/18

Saroj Vs. Dharma Rohilla

03.07.2019

Present:-Sh.L.S.Gautam, Ld. Counsel for complainant.

Ms. KomalChhibber, Ld. Counsel with respondent no.3.

Be put up for order at 4 pm.

MM:MAHILA COURT-02

At 4 pm:-

***Present:- Complainant in person.
Ld. Counsel for respondents.***

Vide this order, I shall decide application of the complainant filed u/a 23 of PWDV Act. In the application, the complainant has prayed for protection order u/a 18 & 19 of PWDV Act.

Ld. Counsel for the complainant has argued that the complainant has made specific allegation of

harassment against the respondents and therefore, she is entitled to interim relief at this stage.

On the other hand, Ld. Counsel for the respondents has argued that the complainant is not an aggrieved person as there is no domestic relationship between the parties and she never shared the kitchen. The complainant is only licensed in the property and civil suit is already pending against her and therefore, she is not entitled to any relief. Ld. Counsel has relied upon judgment passed by Hon'ble Supreme Court in the case of SR Batra vs. Taruna Batra and order passed by Hon'ble High Court in the matter of Adil vs. State dated 20.09.2010 passed in CRL.M.C.4159/2009 in support of the plea that the complainant is not entitled to any interim relief.

This Court has considered the submissions of the parties and perused the material on record.

The present petition has been filed against the father-in-law, mother-in-law and brother-in-law. In the petition, the complainant has stated that after the marriage she went to Hyderabad with her husband where they lived for about two years and thereafter, they returned to matrimonial house at Palam Colony on 16.12.2016 and since then, they have been living there. The respondents and their tenants had given beatings to the complainant and her husband on 22.11.2017 and the complainant has made police complaint. She has alleged that since the day she had come to the matrimonial house, all the respondents have been quarreling with her and they have been physically and mentally harassing her.

The respondents in their reply have stated that the second floor property where the complainant is living was not shared household and there was no valid marriage between the complainant and elder son of the respondent no.1 and 2. In the reply, they

have denied the allegations made by the complainant.

The respondents have contended that there is no domestic relationship between the parties.

It is a matter of record that the respondents had challenged the summoning order passed by this Court on the ground that there is no domestic relationship and the revision filed by the respondents had been dismissed by the Ld.ASJ vide order dated 11.12.2018. The respondents had filed appeal before Hon'ble High Court of Delhi and the appeal is pending. There is no stay on the present proceedings by the order of Hon'ble High Court.

The record would show that the complainant has specifically stated about the incident when she was physically assaulted by the respondents. It is also clear from the reply of the respondents that the complainant is living on the second floor of the property bearing No. RZF-946, Raj Nagar, Palam Colony near Heera Devi Model Public School, New Delhi.

The complainant has mentioned specific incidents when she was subjected to physical violence by the respondents. Therefore, this Court is of the view that complainant is entitled to interim relief at this stage. The issue whether there has been domestic relationship between the complainant and the respondents is pending adjudication before the Hon'ble High Court. The judgment relied upon by the Ld. Counsel for the respondents is not applicable to the case in hand because the issue of domestic relationship is still pending before the Hon'ble High Court.

In view of the fact that the complainant has made specific allegations of harassment against the respondents, this Court is of the view that the complainant is entitled to interim protection. Therefore, protection order is granted in favour of

the complainant and the respondents are restrained from committing and physical violence upon the complainant and they are also restrained from forcibly dispossessing the complainant from property no.RZF-946 Raj Nagar II, Palam Colony, IInd Floor, near Heera Devi Model Public School, New Delhi without following due process of law.

The application of the complainant for interim relief is accordingly disposed of.

Copy of order be given dasti to both parties and be also sent to the SHO concerned for necessary action/compliance.

Be put up for C.E. on 25.10.2019.

Copy of evidence by way of affidavit be supplied one week in advance before NDOH.”,

and vide the said order, it has been observed to the effect that the complainant i.e. the respondent herein had made specific allegations of harassment against the respondents therein and that she was thus entitled to interim protection and a protection order was thus granted in her favour and the petitioners herein were restrained from committing any physical violence on her and were also restrained from forcibly dispossessing her from property no. RZ F946, Raj Nagar-II, Palam Colony, Near Heera Devi Model Public School, New Delhi 110077 without following the due process of law, which is the order dated 03.07.2019 which is under challenge in CA 323/2019 before the learned ASJ concerned, which is now stated to be listed for the date 15.06.2020 and vide order dated 24.02.2020, it has been observed by the learned ASJ-02, District South West, Dwarka Courts, New Delhi in CA 323/2019 to the effect:-

“24.02.2020

Present : Ms. Komal Chibbar, counsel for appellants with appellants.

Sh. Amit Kumar Tanwar, LAC for respondent with respondent.

Copy of order doted 11.12.2018 of Court of Sh. Gautam Manan, the then Ld. ASJ filed by counsel for appellant. Certain judgments filed both on behalf of appellants as well as respondent. Counsel for respondent has submitted that petitioners herein have challenged summoning order passed by Ld. Trial Court in revision which revision petition was dismissed by court of Sh. Gautam Manan. Ld. ASJ vide order dated 11.12.2018. It is submitted that thereafter petitioners challenged order of summoning and order dated 11.12.2018 passed by Ld. ASJ before Hon'ble High Court of Delhi and which matter is fixed for orders before Hon'ble High Court of Delhi now. It is submitted that petitioners have taken similar /same grounds while challenging impugned order passed by Ld. Trial Court. It is submitted that when matter in essence is seized of by Hon'ble High Court of Delhi, this court should refrain from passing any order on merits in the matter.

In view of the fact that the matter is seized of by Hon'ble High Court of Delhi wherein similar grounds have been taken by petitioners, I am of the view that order of Hon'ble High Court should be waited for.....”

26. On a consideration of the entire record, this Court is of the considered view that the impugned order dated 11.12.2018 of the learned ASJ-02, District South West, Dwarka Courts, New Delhi in

CR No.458/2018 in a revision petition cannot be faulted with in view of the contentions raised on behalf of the respondent herein being to the effect that she and Ajit Kumar Rohella had been married especially where the petitioner nos. 1 & 2, his parents submit that they even attended such marriage but they stated that there were no necessary ceremonies performed and thus, the factum of the respondent herein falling within the ambit of an *aggrieved person in a domestic relationship* in terms of Section 2(a) read with Section 2(f) of the Protection of Women from Domestic Violence Act, 2005, cannot be said to be *prima facie* in existent.

27. The observations of the learned ASJ vide the impugned order in the Revision Petition also indicate that it has been specifically claimed by the respondent that the place where she resides at RZ F946, Raj Nagar-II, Palam Colony, Near Hera Devi Model Public School, New Delhi, is her matrimonial home.

28. Apparently, in these circumstances, the observations of the Revisional Court observing to the effect that the summoning of the petitioners herein by the Trial Court vide order dated 12.09.2018 in CC No.26903/2018 suffers from no infirmity, cannot be faulted with

29. Thus, this Court does not consider it appropriate to exercise discretionary powers under Section 482 of the Cr.P.C., 1973 read with Article 227 of the Constitution of India to interfere in the said impugned order dated 11.12.2018 of the Revisional Court. The petition CrI.M.C. No. 509/2019 and the accompanying application CrI.M.A. No.2172/20 are thus, declined.

30. Nothing stated herein above shall however amount to any expression on the merits or demerits of CA 323/2019 pending before the learned ASJ-02, District South West, Dwarka Courts, New Delhi.

ANU MALHOTRA, J.

JUNE 12, 2020
SV/NC

