

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Pronounced on: November 24, 2020

+ TR.P.(CRL.) 30/2019

MOHIT MEHTA

..... Petitioner

Through: Dr. Harish Uppal & Mr.
T.Prasad, Advocates.

versus

NAYANIKA THAKUR

..... Respondent

Through: Mr. Jayanth Pawar, Advocate.

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J

1. This is a petition for transfer of criminal cases bearing no. CC/6527/2019, under Section 498A/406/34 IPC pending in the court of learned MM, South-West District, Dwarka Courts and cases bearing no. CC/31435/16, CC/15584/17 and CC/2353/19 pending in the court of Ms. Prabh Deep Kaur, learned MM, Patiala House Courts to the court of Family Courts, Patiala House Courts where cases bearing no. HMA 303/2018 filed under Section 13(1)(ia) (for

Divorce), HMA no. 315/2018 filed under Section 13(1)(ib), GS no. 47/2018 and GS 48/2018 between the same parties are pending.

2. Learned counsel for the petitioner has submitted that petitioner and respondent were married in the year 2002 and out of the said wedlock, a daughter was born out on 17.12.2008. It is submitted that due to some matrimonial dispute, petitioner and respondent are living separately since 14.06.2014 and following cases are pending between both the parties:-

S.no.	Case no.	Case under Section	Parties	Court where case is pending
1	GP No. 47/2018	Section 6 HMA & G. Act 1956	Nayanika Thakur (wife) v. Mohit Mehta	Ms. Swarana Kanta Mehra, learned Presiding Judge, Family Court, Patiala House Courts.
2	GP No. 48/2018	Section 6 HMA & G. Act 1956	Mohit Mehta vs. Nayanika Thakur	Ms. Swarana Kanta Mehra, learned Presiding Judge, Family Court, Patiala House Courts.
3	HMA No. 303/2018	Section 13(1) (ia) HM Act.	Mohit Mehta vs. Nayanika Thakur	Ms. Swarana Kanta Mehra, learned Presiding Judge, Family Court, Patiala House Courts.
4	HMA no. 315/2018	Section 13(1)(ib)	Mohit Mehta vs.	Ms. Swarana Kanta Mehra,

		HM Act	Nayanika Thakur	learned Presiding Judge, Family Court, Patiala House Courts.
5	CC No. 31435/2016, CC No. 2353/219 filed under Section 340 Cr.P.C. by petitioner and CC no. 15584/2017 for Execution	Section 12 DV Act.	Nayanika Thakur(wife) v. Mohit Mehta & Ors.	Ms. Prabhdeep Kaur, learned MM, Patiala House Courts.
6	CC No. 6527/2019	Section 498A/506/34 IPC	State v. Mohit Mehta & ors.	Ms. Shivani Chauhan, learned MM, SW District, Dwarka Courts.

3. Learned counsel for the petitioner has submitted that since four matters are already pending before the Family Court, Patiala House Courts, New Delhi, the matters bearing no. CC/6527/2019, under Section 498A/406/34 IPC pending in the court of Ms. Shivani Chauhan, learned MM, South-West District, Dwarka Courts and cases bearing no. CC/31435/16, CC/15584/17 and CC/2353/19 pending in the Court of Ms. Prabhdeep Kaur, learned MM, Patiala House Courts be also transferred to the Family Court where case

bearing no. HMA 303/2018 filed under Section 13(1)(ia) (for Divorce), HMA no. 315/2018 filed under Section 13(1)(ib), GS no. 47/2018 and GS no. 48/2018 between the same parties are pending as this will not only save money and effort but also save time and help in expeditious disposal of the matters as similar facts and evidence are required to show the contradictions, perjury and false statements etc.

4. Learned counsel for the petitioner in support of his submissions has relied upon the following case law:-

- a. *Social Action forum for Manav Adhikar and Anr vs. Union of India, W.P.(Civil) no. 73/2015;*
- b. *Mr. Santosh Machindra Mulik v. Mrs. Mohini Mithu Choudhari, Misc. Civil Application no. 64 of 2019.*

5. Assailing the allegations of petitioner, respondent has filed reply and stated that Family court has no jurisdiction to deal with the matter pertaining to Domestic Violence Act in view of Section 7 of the Family Courts Act, 1984. In this regard, learned counsel for the respondent has relied upon **Smt. Neetu Singh v. Sunil Singh, AIR 2008 Chhattisgarh 1.**

6. I have considered the rival submissions. Learned counsel for the petitioner has relied upon Section 26 of the PWDV Act, 2005.

The said provision runs as follows:-

**Section 26 in The Protection of Women
from Domestic Violence Act, 2005**

26. Relief in other suits and legal proceedings.—

(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

7. Perusal of above provision reveals that complaint case filed under PWDV Act, 2005 does not fall within the jurisdiction of Family Court. The provision only contemplate that aggrieved person can also seek relief available under Sections 18,19,20,21 and 22 of the PWDV Act, 2005 before a Civil Court, Family Court or a

criminal Court. Sub-Section 3 of the Act casts a duty on an aggrieved person that in case any relief has been obtained by the aggrieved person in any proceedings other than proceedings under this Act, she shall be bound to inform the Magistrate of the grant of such relief. Thus, an option has been given to the aggrieved person to avail relief available to her under Section 18,19,20,21 and 22 of the PWDV Act in a legal proceedings before a Civil Court, Criminal Court or Family Court. However, the aggrieved person cannot file any application under Section 12 of the Act before Family Court claiming relief under Section 18,19,20 and 21 of the said Act because such an application, as per PWDV Act, can only be filed before the learned Magistrate competent to entertain the same. Thus, the relief claimed by the petitioner i.e. transfer of complaint pending before learned MM to Family Court cannot be granted for the simple reason that proceedings pending before the learned MM under PWDV Act can only be entertained and adjudicated by the concerned Magistrate. Section 26 of the PWDV Act does not give any right to the petitioner to get the complaint filed under PWDV Act transferred to Family Court. The judgment relied upon by

learned counsel for the petitioner titled **“Social Action forum for Manav Adhikar and Anr vs. Union of India”**(Supra) is distinguishable on the basis of facts and circumstances stated therein. So far as the other judgment of Bombay High Court i.e. **“Mr. Santosh Machindra Mulik v. Mrs. Mohini Mithu Choudhari”**(Supra) is concerned, this court is of the opinion that the ratio of the said judgment is against the scheme of Domestic Violence Act as well as Family Court Act. The Bombay High Court has held that it is in the interest of justice if two proceedings i.e. criminal complaint under Section 12 of PWDV Act and proceedings pending before Family Court are heard together. The Bombay High Court is of the opinion that in order to avoid conflicting decision, it should be heard by one court. It seems that the fact that an application under Section 12 of the PWDV Act cannot be filed before a Family court and as per scheme of the Act, it has to be filed before the Magistrate only who alone is competent to entertain it, was perhaps not brought to the notice of the court. The judgment passed by **Division Bench of Chhattisgarh High Court** in **‘Smt Neetu Singh v. Sunil Singh(Supra),’** is in consonance with the

scheme of the PWDV Act where the court has held that an application under Section 12 of the PWDV Act can only be filed before a Magistrate and not Family Court. The relevant para of the said judgment runs as follows:-

8. Section 26 of the Act has been inserted with an objective that in addition to the provisions of Section 12 the aggrieved person is entitled to any relief available under Sections 18, 19, 20, 21 and 22 in any legal proceeding, before a civil Court, family Court or a criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of the Act. Sub-section (2) of Section 26 further envisages that any relief referred to in Sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal Court. Sub-section (3) cast duty on the aggrieved person that in case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under Section 12 of this Act, she shall be bound to inform the Magistrate of the grant of such relief. Therefore, as per Section 26 of the Act, the aggrieved person is also entitled to seek relief as provided under Sections 18, 19, 20, 21 and 22 in any legal proceeding, before a civil Court, family Court, or a criminal Court in which the aggrieved person and respondent are party & that relief is in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding. Therefore, an option has been given to the aggrieved person to avail reliefs available to her under Sections 18, 19, 20, 21 and 22 in a legal proceeding pending in a civil Court, criminal Court or

family Court in addition to filing of the application under Section 12.

9. In view of the above scheme of the Act, specially as per the provisions of Section 26 of the Act, the appellant herein is entitled to seek relief available to her under Sections 18, 19, 20, 21 and 22 of the Act, 2005 in the maintenance proceeding pending in the Family Court, Bilaspur. But the appellant is required to move an application under Section 26 read with Section in which she is seeking relief. However, instead of doing that, the appellant moved an independent fresh application under Section 12 of the Act, 2005 which can be entertained only by the Magistrate having jurisdiction. An application under Section 12 cannot be filed before Family Court because proceeding under Section 12 of the Act, 2005, as per the scheme of the Act, has to be filed before the Magistrate competent to entertain the application. (Emphasis supplied)

8. Thus, an application can be filed before Family Court by the aggrieved person claiming relief as mentioned in Section 26(1) of the PWDV Act. However, if the aggrieved person intends to file an application under Section 12 of the PWDV Act, it can only be filed before a Magistrate. Aggrieved person has been defined in Section 2(a) of the PWDV Act and it runs as under:-

(a) “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

9. Perusal of the above definition reveals that it is the woman who can claim relief under Section 18 to 21 of PWDV Act before other courts including Family Court. Section 26 of the PWDV Act does not entitle the petitioner i.e. Mohit Mathur to claim any relief as envisaged in the said Section.

10. So far as prayer of the petitioner for transfer of case titled 'State vs. Mohit Mehta & Ors. bearing no. CC/6527/2019, under Section 498A/406/34 IPC pending in the court of Ms. Shivani Chauhan, learned MM, South-West District, Dwarka Courts to the Family court is concerned, the same also cannot be acceded to for the reason that Family Court has no jurisdiction to try a criminal case under Section 498A/406/34 IPC as it can only be tried by a learned Magistrate.

11. In view of above discussion, the cases pending in Patiala House Courts, filed under PWDV Act and the case pending in Dwarka Courts under Section 498A/506/34 IPC cannot be transferred to Family Court where other cases between the parties are pending. The transfer petition is, therefore, dismissed and stands disposed of accordingly.

12. The Judgment be uploaded on the website of this court forthwith.

BRIJESH SETHI, J

NOVEMBER 24, 2020

AK

