

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

201

**CRM-M-34162-2021
Decided on : 17.12.2021**

Sukhwinder Kaur and others

. . . Petitioner(s)

Versus

State of Punjab and another

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Veneet Sharma, Advocate
for the petitioner(s).

Mr. Luvinder Sofat, AAG, Punjab.

Mr. Manoj Sharma, Advocate
for respondent No.2.

MANJARI NEHRU KAUL, J. (Oral)

The instant petition has been filed under Section 482 Cr.P.C., seeking quashing of complaint i.e. COMA No. 80/2021, dated 01.06.2021, titled as, "Ranbir Multani (minor) s/o Gurpreet Multani Vs. Gurpreet Multani and others", under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for brevity 'DV Act') (annexed as Annexure P-2) and all the subsequent proceedings arising therefrom. Still further, learned counsel has impugned the order dated 01.06.2021 (annexed as Annexure P-3), passed by CJM, Gurdaspur, vide which the application for grant of an ad interim relief to respondent No.2 - Ranbir Multani, minor son of petitioner No.3 in the sum of Rs. 4,000/- from the date of application was allowed.

Learned counsel submits that a complaint under Section 12 of the DV Act, which had been filed by respondent No.2 against the petitioners i.e. grandmother, grandfather and father respectively, would

not be maintainable, as respondent No.2 (minor male child) was not covered within the definition of “aggrieved person” under Section 2(a) of the DV Act. Learned counsel further submits that an application under Section 12 of the DV Act could be filed only by an aggrieved person or protection officer or any person on behalf of the aggrieved person.

It was also submitted that the mother of respondent No.2 had already preferred a complaint on 08.02.2021 (Annexure P-4) under Section 12 of the DV Act against the petitioners and with it was only to harass the petitioners, a separate complaint under Section 12 of the DV Act, had been subsequently preferred on 01.06.2021 (Annexure P-2), on behalf of respondent No.2. Resultantly, the petitioners were being forced to put in an appearance in two separate proceedings before the same Court and on different dates. He, thus, submitted that the institution of a separate complaint on behalf of respondent No.2, was nothing but an abuse of the process of law. A prayer was, therefore, made to quash the impugned complaint dated 01.06.2021 (Annexure P-2) and set aside the impugned order dated 01.06.2021 (Annexure P-3).

On being put to notice, Mr. Manoj Sharma, Advocate, put in an appearance on behalf of respondent No.2 and opposed the submissions made by the counsel opposite.

He submitted that since respondent No.2 had filed the petition through his mother, who was an aggrieved person, the impugned order could not be said to be bad in law. He further submitted that no prejudice had been caused to the petitioners due to the institution of a separate complaint under Section 12 of the DV Act by respondent No.2.

I have heard learned counsel for the parties and perused the material on record.

It would be apposite to reproduce Section 12 and Section 2(a) of the DV Act, which are as under:-

“12. Application to Magistrate.—

- (1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act: Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.*
- (2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent: Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.*
- (3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.*
- (4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.*

(5) *The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.*

xxx xx xxx xx

2(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;”*

A bare reading of the provisions of Section 12 of the DV Act makes it abundantly clear that an application under Section 12 of the DV Act, can be filed only by an aggrieved person or a protection officer or any other person on behalf of the aggrieved person. The definition of ‘aggrieved person’, u/s 2(a) of the DV Act, which stands reproduced hereinabove, would mean “any woman”, who is, or has been, in a domestic relationship and may have been subjected to any domestic violence.

It would be pertinent to point out that the object behind the enactment of the DV Act, was for more effective protection of the rights of women granted under the Constitution, who were victims of domestic violence and any other matters connected therewith or incidental thereto.

Coming to the case in hand, it has not been disputed by learned counsel for respondent No.2 that his mother had also preferred a complaint under Section 12 of the DV Act on 08th February, 2021 i.e. prior to the institution of the impugned complaint dated 01.06.2021 (Annexure P-2).

Still further, in the light of the object and purpose behind the enactment of the DV Act and a conjoint reading of Section 12 with

Section 2(a) of the DV Act, there can be no manner of doubt that respondent No.2 i.e. the minor son of petitioner No.3 would not fall within the definition of aggrieved person and any complaint made under Section 12 of the DV Act by a person, who is not an aggrieved person would thus be not maintainable. Respondent No.2 i.e. the minor son of petitioner No.3 could have only filed a petition '**with**' the aggrieved person i.e. his mother and not just '**through**' his mother, which has been done in the case in hand. Mere filing of the complaint by respondent No.2 (minor son) through an aggrieved person (his mother) would not bestow any legal right on him to file a separate petition in view of the definition of 'aggrieved person' given in Section 2(a) of the DV Act.

This Court, therefore, has no hesitation in observing that the respondent child of the parties may be entitled to some monetary relief in some cases falling under Section 20 of the DV Act, however, in those cases his claim would not be independent, but would be maintainable only with the claim of his mother, who in her capacity as an aggrieved person alone would be competent to file a complaint under Section 12 of the DV Act, for seeking relief.

As a sequel to the above, the instant petition is allowed and impugned complaint i.e. COMA No. 80/2021, dated 01.06.2022, titled as, "Ranbir Multani (minor) s/o Gurpreet Multani Vs. Gurpreet Multani and others", under Section 12 of the DV Act (Annexure P-2) is quashed and the impugned order dated 01.06.2021 (Annexure P-3), passed by CJM, Gurdaspur, is set aside.

At this stage, a prayer has been made by learned counsel for respondent No.2 that liberty may be granted to the mother of respondent No.2 to amend the complaint dated 08.02.2021 (Annexure P-4), filed by

her under Section 12 of the DV Act, for impleading respondent No.2 as a party therein.

Allowed as prayed for with a view to decrease the multiplicity of proceedings.

(MANJARI NEHRU KAUL)
JUDGE

December 17, 2021

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No