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

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Reserved on: March 24, 2021

Decided on: April 07, 2021

+ TR.P.(CRL.) 19/2020
CRL.M.A. 10182/2020 (stay)

SANDEEP AGGARWAL Petitioner
Represented by: Mr. Aditya Goel, Adv.

versus

VINITI AGGARWAL Respondent
Represented by: Mr. Lalit Gupta, Mr. Sidharth
Arora, Adv. with respondent
in person.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Petitioner and respondent are husband and wife whose marriage ran into rough weather resulting in the respondent leaving the matrimonial home on the 9th of September, 2011. Thereafter, the respondent filed a complaint bearing No. 24720/2011 (New No. 615039/2016) under Section 12 of the Protection of Women from Domestic Violence Act (in short the PWDV Act) against the petitioner and his parents, which is pending disposal before the learned Metropolitan Magistrate, South-East District, Saket Courts.

2. Since the petitioner failed to comply with the directions of the learned Metropolitan Magistrate, the respondent has filed execution petitions which are also pending before the learned Metropolitan Magistrate. In the year 2014 the petitioner filed a petition seeking divorce being HMA 1210/2014 against the respondent, which is pending before the learned Principal Judge, Family Courts, South-East District, Saket Courts.

3. By this petition the petitioner seeks transfer of the complaint filed by the respondent under Section 12 of the PWDV Act and the execution petitions filed therein from the Court of learned Metropolitan Magistrate to the learned Principal Judge, Family Courts, South-East District, Saket Courts.

4. According to the petitioner both the petitions arise out of the matrimonial dispute between the parties wherein both parties have levelled allegations and counter-allegations and hence the entire evidence of the parties is same. Evidence of the petitioner has already been recorded in the divorce petition and in the complaint filed under PWDV Act by the respondent, evidence of the petitioner is yet to be recorded. The petitioner further states that since the Court of learned Metropolitan Magistrate is overburdened, the recording of evidence would be a challenge, hence in the interest of justice all the aforementioned cases be clubbed together and decided by one Court to maintain judicial propriety and to avoid conflicting decisions. Learned counsel for the petitioner relies upon Section 26 of the PWDV Act which empowers the Family Court to decide the complaint and execution petitions as well. Reliance is also placed on the decision reported as MANU/MH/3459/2019 Santosh Machindra Mulik Vs. Mohini Mithu Choudhari.

5. Learned counsel for the respondent refuting the arguments of learned counsel for the petitioner states that the complaint under Section 12 of the PWDV Act was filed on 23rd September, 2011 i.e. prior to the filing of the divorce petition and in the said complaint, the complainant's i.e. the respondent's evidence has already concluded and the divorce petition was filed by the petitioner as a counter-blast to the complaint filed under Section

12 of the PWDV Act by the respondent. Hence the complaint filed by the respondent cannot be transferred to the Principal Judge, Family Courts. Learned counsel for the respondent refuting the arguments of learned counsel for the petitioner further contends that the petitioner is not entitled to be heard in matrimonial proceedings on account of the fact that he has not cleared arrears of maintenance and number of execution petitions filed by the respondent are pending before the learned Metropolitan Magistrate. Reliance is placed on the decisions reported as (2006) 130 DLT 643 DB Santosh Sehgal Vs. Murari Lal Sehgal. The petitioner is openly flouting the orders of the Court and making every effort to delay the proceedings in the complaint case under Section 12 of the PWDV Act. Despite the fact that the respondent has been examined as claimant and cross-examined on number of dates, adjournments were sought on one pretext or the other on behalf of the petitioner. Constrained by the action of the petitioner seeking repeated adjournments, learned Metropolitan Magistrate was pleased to close the right of the petitioner to further cross-examine the respondent.

6. According to learned counsel for the respondent, the Court of Magistrate alone has the jurisdiction to adjudicate an application under Section 12 of the PWDV Act, as held in the decision reported as 2007 SCC Online Chh 19 Smt. Neetu Singh Vs. Sunil Singh. The PWDV Act does not clothe jurisdiction on the Family Courts to entertain an application under Section 12 of the PWDV Act, as held in 2009 (1) MWN (Crl.) 472 Capt. C.V.S. Ravi Vs. Mrs. Ratna Sailaja. Section 26 of the PWDV Act is required to be interpreted in a manner that an application under Section 12 of the PWDV Act can only be considered by Court of Magistrate, however the relief as contemplated under Section 18 to 22 of the PWDV Act can also be

granted by other Courts including the Family Court. It is for this reason Section 26(3) of the PWDV Act clarifies that if a relief under Section 18 to 22 of the PWDV Act is granted by other Court, it shall be reported to the Court of the Magistrate, leading to the interpretation that only the Court of Magistrate can try an application under Section 12 of the PWDV Act. Reliance is placed on the decision reported as MANU/KE/2119/2018 Rajeev Thomas Vs. Sheeja Antony wherein it was held that insertion of Section 26 to the PWDV Act was to provide for relief in addition to the provisions of Section 12 of the PWDV Act to an aggrieved person. It is further claimed that procedure in adjudication and enforcement of the order and provisions of appeals from the decisions of the Magistrate under Section 12 of the PWDV Act is materially different from the procedure of adjudication and enforcement of orders under the Family Courts Act and since recourse to the provisions of the Family Court Act, 1984 amounts to denial of the right of appeal before the Sessions Court, as permitted from an order passed on an application under Section 12 of the PWDV Act by the learned Magistrate, the transfer of the complaint filed by the respondent to the Family Court is unwarranted.

7. Heard learned counsels for the parties.

8. The issue raised in the present petition hinges on the interpretation of Section 26 of the PWDV Act, which reads as under:

“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.”

9. In Smt. Neetu Singh Vs. Sunil Singh (supra) the Division Bench held:

“9. 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.

10. 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.”

10. In Capt. C.V.S. Ravi Vs. Mrs. Ratna Sailaja (supra) it was held:

“11. I have carefully considered the said submissions made by the learned counsel on either side. The decisions reported in 2007 CrL.L.J. 2604 (Kerala) (referred to supra), AIR 2008 Chh 1 (referred to supra) and the order dated 02.04.2008 rendered in CrL.O.P.No.7156 of 2007 squarely covers the issue that arises for consideration in the above petition. I am in respectful agreement with the view taken by the learned Judges in the above decisions that a petition filed under Section 12 of the Act cannot be transferred from the file of the learned Magistrate to be heard along with a maintenance petition already filed by the wife and pending before a Family Court.

12. As elaborated and held by me in the order dated 28.11.2007 rendered in CrL.O.P.No.32475 of 2007 the Act has been enacted to provide for a remedy under the Civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society and the Act aims at providing speedy remedy to victims of domestic violence and to achieve that object special procedure has been provided for in the Act itself and the Act further provides for the disposal of the application filed by the aggrieved person in a time bound manner and to achieve that

object certain enabling procedures have been set-out under Section 13 of the Act. As per Section 12 (5) of the Act, it is the bounden duty of the Magistrate to make an endeavour to dispose of the application within a period of sixty days from the date of its first hearing, but no such time limit has been prescribed in Section 125 of the Cr.P.C., for the disposal of the petitions filed under Section 125 of the Cr.P.C. Though both the proceedings may be summary in nature this enabling provision is available only under the Domestic Violence Act to the Magistrate hearing an application under Section 12 of the Act. In this case, a perusal of the counter affidavit filed by the respondent shows that the respondent had approached the protection officer on 29.02.2008 and after conducting enquiry the protection officer has filed a domestic incident report under the provision of Section 9(b) read with Section 37 (2) (c) of the Act before the XVII Metropolitan Magistrate Court on 31.03.2008 and the learned Magistrate has fixed the date of hearing of the case on 04.08.2008 and from 25.04.2005 the case is pending before the learned Magistrate because of the adjournments taken by the petitioner herein and because of that the learned Magistrate was not in a position to pass orders within the time stipulated in the Act and if at this stage, the petition is transferred to the file of the Family Court, its disposal will be further delayed which will in effect defeat the very object sought to be achieved by the Domestic Violence Act and on that ground also this Court is not inclined to order transfer.

13. In the decision reported in 1991 Cr.L.J. 1838 (DB) (referred to supra) and relied on by the learned counsel for the petitioner the question that came up for consideration before the Division Bench was as to whether the High Court has jurisdiction to transfer the case from one family Court to another Court in exercise of powers of transfer under C.P.C. and Cr.P.C. While considering that issue the Division Bench in paragraphs 14 and 15 of the said decision has held as under-

“14. Family Court is a court, which decides the disputes in exercise of the State’s judicial power conferred on it

by a statute in a judicial manner and declare the rights of the parties. Parties before the Family court are entitled to be heard in support of their case and they are also entitled to adduce evidence in order to prove their claim, they can cross-examine each other and adduce evidence. The Family court is obliged under law to settle and decide the dispute on the basis of the evidence produced by the parties. Family Court has all the attributes and satisfies all the ingredients of a Court. It has been declared by S.7 of the Act to be a distinct court or subordinate civil court to which provisions of the C.P.C. and Cr.P.C. have been applied by S.10 of the Act. It will not cease to be a court merely because some restrictions are imposed by Ss.11 to 16 of the Act.

“15. Looked at from every single Family Court is a Court and as such, High Court has powers u/Ss. 22 to 24 of the C.P.C. to transfer a case relating to the matters dealt with by explanation to sub-s. (1) of S.7 of the Act and likewise has powers u/S. 407 of the Cr.P.C. to transfer a case relating to Chapter IX, Cr.P.C.”

Thus it is clear that the question of transfer of an application filed under Section 12 of the Act from the file of a Judicial Magistrate to the file of a Family Court was not an issue that came up for consideration before the Division Bench. Therefore, that decision has no applicability to the facts of this case. Here transfer is not sought for from one Family Court to another Family Court and the transfer sought for in this case is from the file of the Magistrate Court to the file of the Family Court. The Domestic Violence Act does not contain any provisions clothing jurisdiction on the Family Court to entertain an application filed under Section 12 of the Act. It may be true that the reliefs available under Sections 18 to 22 of the Act may also be claimed in a pending proceeding before the Family Court already initiated by the aggrieved person but from that it cannot be inferred that an independent application under Section 12 of the Act can be filed before the Family Court. So only an option is given to the aggrieved person to

claim the reliefs available under Sections 18 to 22 of the Act in a pending legal proceedings initiated by such aggrieved person before the Family Court and therefore from such a liberty given to the aggrieved person an inference cannot be drawn to the effect that a pending application filed under Section 12 of the Act before the learned Magistrate can be transferred to the file of the Family Court. Unless the Court has been specifically empowered to entertain an independent application filed under Section 12 of the Act, transfer of a pending application filed under Section 12 of the Act from the file of the learned Magistrate to the file of the Family Court cannot be ordered.”

11. In P. Rajendran Vs. Sasikala (Criminal Original Petition No./2013 decided on 14th September, 2017, the Madras High Court following the decision in Capt.C.V.S. Ravi (supra) reiterated that merely because Family Court can grant reliefs under Sections 18 to 22 of PWDV Act, it does not lead to the conclusion that an application filed by an aggrieved person under Section 12 of the PWDV Act is required to be transferred to the Family Court. The Court upheld the order of the Principal Family Court declining to transfer the application under Section 12 of the PWDV Act to the Family Court.

12. In Rajeev Thomas Vs. Sheeja Antony (supra) it was held:

“9. The specific contention of the learned counsel for the petitioners was that, S. 26 of the D.V. Act conferred concurrent jurisdiction on the Family Court as well as on the Magistrate Court while adjudicating the reliefs under Ss. 18 to 22 of the D.V. Act. S. 26 clearly clarifies that, petitioner is under an option to seek reliefs under Ss. 18 to 22 along with other reliefs in any pending proceeding instituted before or after introduction of the D.V. Act. The correct interpretation and the scope of S. 26 of the D.V. Act was the subject matter of decisions of various courts. In Smt. Kumah Behera v. State of Orissa and Ors. MANU/OR/0531/2009 : (2010 (1) KLT OnLine

1102 (Ori.) : AIR 2010 Orissa 68), it was held that, Family Court can grant any relief available under Ss. 18 to 22, if such reliefs are sought in a pending proceeding. However, for an independent proceeding seeking relief under Ss. 18 to 22, only concerned Magistrate has jurisdiction as per provisions of Ss. 26 and 27 of the D.V. Act. This view was affirmed by the Division Bench of Orissa High Court in *Brundaban Patra & Anr. v. Rajalaxmi Patra* (MANU/OR/0236/2011 : 2011 (4) KHC 740). This was further explained in *Ambreen Akhoun v. Aditya Aum Paudwal and Ors.* MANU/MH/1865/2015 : (2016 (1) KLT OnLine 2583 (Bom.) : 2016 CriLJ 141). In that, Bombay High Court held that, S. 26 of the D.V. Act enables a party to seek relief available under Ss. 18 to 22 of the D.V. Act in any legal proceeding before the civil court or Family Court or criminal court affecting the aggrieved person, whether such proceeding was initiated before or after the commencement of the D.V. Act. It was held that sub-ss. (1) and (2) of S. 26 presupposes that, there should be a suit or legal proceeding pending before the Civil or criminal Court wherein the relief under the D.V. Act also can be sought in addition to relief. It was held that the scope of S. 26 of the D.V. Act was that, same relief under Ss. 18 to 22 can be the subject matter of any other proceeding pending before the Family Court along with other reliefs sought. This was explained by a learned Single Judge of this Court in *Raju Narayana Swamy v. Beena M.D* MANU/KE/0103/2017 : (2017 (1) KLT 661 : 2017(1) KHC 607). It was clarified that the Family Court will have jurisdiction under the D.V. Act to grant relief to the victim of domestic violence, only if, there is an existing legal proceeding and the application under Section 26 of the Act seeking relief under sections 18 to 22 is filed in that proceeding.

10. In *Neethu Singh v. Sunil Singh* (2007 (4) KLT OnLine 1202 (Chhatt.) : AIR 2008 Chhatt. 1), reliefs under the D.V. Act was sought by the wife in a proceeding before the Family Court. The application was ordered to be returned for filing before the competent court having jurisdiction. This was under challenge before the Chhattisgarh High Court. Referring to the various provisions of the Statute, it was held that, under S. 26 of the

D.V. Act, an option has been given to the aggrieved person to avail reliefs available to her under Ss. 18 to 22 in a legal proceeding pending in a civil court, criminal court or family court in addition to filing of the application under S. 12. An application under S. 12 cannot be filed before the Family Court because, as per the scheme of the Act application under S. 12 of the Act, 2005 has to be filed before the Magistrate competent to entertain the application.

11. Division Bench of this Court in *Sudhannya v. Umasanker Valsan* (MANU/KE/2155/2012 : 2013 (1) KLT 135) had considered the question whether S. 26 of D.V. Act gives an option to the aggrieved person to approach either Magistrate under S. 12 of the Act or Family Court, if person needs the reliefs contemplated under Ss. 18 to 22 of the D.V. Act. It was held that, though S. 12 of the D.V. Act specifically confers power on the Magistrate Court and S. 26 of the Act explains that, identical reliefs can be sought before the Family Court, the distinction is so clear that the application under S. 12 can be filed only before the Magistrate court and such a power is not conferred on the Family Court.

12. The distinction has been explained by a learned Single Judge of this Court in *MA. Mony v. M.P. Leelamma and Another* (MANU/KE/0242/2007 : 2007 (2) KLT 432 : 2007(2) KLJ 209). It was held that, though under S. 7(2)(b) of the Family Court is clothed with authority to deal with matters, which, under any other law, the Family Court can consider, it is significant that the Family Court is not invested with any power to deal with an application under S. 12 of the D.V. Act. That reliefs undress Ss. 18 to 22 can be claimed before the Family Court in any other proceeding is a world different from the contention that a petition under S. 12 can be considered and disposed of by the Family Court. There is nothing in the language, scheme or purport of the D.V. Act, which can even remotely suggest that a Civil Court or Family Court is competent of deal with an application under S. 12 and grant reliefs under S. 18 to 22 of the D.V. Act. ”

13. In Santosh Machindra Malik (supra) relied upon by learned counsel

for the petitioner, the Bombay High Court only considered whether it would be in the interest of justice that the two matters i.e. the divorce proceedings before the Family Court and the subsequent application under Section 12 of PWDV Act filed by the wife are heard by the same Court. The Court in the said decision noted that it was not about who has the option to file such proceedings under the PWDV Act or have the same transferred to Family Court, the question was whether it was in the interest of justice to have the two proceedings heard together before the Family Court.

14. A bare reading of Section 26 of PWDV Act reveals that it permits availing of the reliefs provided under Sections 18, 19, 20, 21 and 22 of the PWDV Act in any other legal proceedings before a civil or criminal court and in case such a relief is granted than an information to this extent is required to be given to Magistrate dealing with the application under the PWDV Act. However, Section 26 of PWDV Act does not contemplate ouster of jurisdiction of the Magistrate even in a case some relief as contemplated under Sections 18 to 22 of the PWDV Act is granted by the civil or criminal court in some other legal proceedings. The Magistrate will be still empowered to consider and grant the remaining reliefs sought. Therefore, even if a proceeding is pending before the Family Court, the same will not warrant the application under Section 12 of PWDV Act to be transferred to the Family Court. PWDV Act provides for a complete mechanism for enforcement of the rights claimed under Section 12 of PWDV Act and merely because the rights as provided under Sections 18 to 22 of PWDV Act can be claimed in other legal proceedings also does not imply ouster of jurisdiction of the Magistrate to try the matter once divorce proceedings have been filed. Further, as noted above, the petitioner has been

delaying the proceedings in the application under Section 12 of the PWDV Act, also not complying with the orders passed by the Magistrate diligently and is avoiding to make payment of the maintenance to the respondent. It is thus in the interest of justice to conclude the proceedings under Section 12 of the PWDV Act as expeditiously as possible.

15. Consequently this Court finds no reason to accede to the prayers of the petitioner seeking transfer of proceedings pending before the learned Metropolitan Magistrate under Section 12 of PWDV Act to the Family Court. Petition and application are dismissed.

16. Order be uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

APRIL 07, 2021
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