

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

CRM-M-44742 of 2021
Date of decision : 20.12.2022

Hardeep Khan

... Petitioner

Versus

Rano

.. Respondent

CORAM : HON'BLE MRS.JUSTICE AMARJOT BHATTI

Present: Mr.Sunny K.Singla, Advocate
for the petitioner.

Amarjot Bhatti, J.(Oral)

Hardeep Khan has filed this petition under Section 482 Cr.P.C. for quashing of complaint/application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 bearing complaint No.COMA/20/17 instituted on 10.05.2017 tilted as “Rano Vs. Hardeep Khan” and summoning order dated 15.05.2017 passed by the learned Sub Divisional Judicial Magistrate, Malerkotla and order dated 25.08.2021 passed by the learned Sub Divisional Judicial Magistrate, Malerkotla being illegal and abuse of process of law.

The facts of the case are that Rano filed application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 for passing of orders and granting relief in terms of various provisions of aforesaid Act, claiming maintenance, alternative accommodation, compensation, damages and any other relief as detailed in the application. She claimed that she is legally wedded wife of respondent-Hardeep Khan. They got married on 06.11.2002 and out of this wedlock, she is having a male child namely Mohd. Arif. After marriage, they lived together in village

Rauni P.S.Payal, District Ludhiana. The matrimonial dispute started. She was compelled to bring more dowry and cash of Rs.50,000/-. She was continuously maltreated by her husband and in-laws family. On 20.04.2009, she was turned out of the matrimonial home after giving sever beating. She also filed one application to SSP, Sangrur and FIR was registered under Section 498A, 406 IPC. The challan was presented in the court and the case is pending. The respondent never visited the applicant nor provided maintenance to her and her son. They are unable to maintain themselves. He is under legal and moral obligation to provide maintenance as well as to provide accommodation to them. With these allegations, she claimed maintenance, rental accommodation, compensation and damages from the respondent. She further disclosed that she had also filed one application under Section 125 Cr.P.C. which was decided in her favour. The execution regarding recovery of maintenance is also pending. The application is Annexure P-1.

On the filing of this application under Section 12 of Protection of Women from Domestic Violence Act, 2005, notice was served to the respondent who appeared and filed application for dismissal of the application for Protection of Women from Domestic Violence Act, by alleging that it is barred by limitation. The alleged incident of maltreatment took place long time ago that she was allegedly turned out of the matrimonial home on 20.04.2009. This application under Domestic Violence Act has been filed after a long delay of 08 years. It was further alleged that she is not entitled to any relief by filing this application as the same is not maintainable. He has been acquitted in FIR No.178/25.8.2009

under Section 498A, IPC. She had filed application under Section 125 Cr.P.C. claiming maintenance in which he is making payment of maintenance regularly. Therefore, keeping in view these facts, the application for Protection of Women from Domestic Violence Act, 2005 may kindly be dismissed. The learned trial court considered the application and dismissed the same by passing order dated 25.08.2021.

Feeling aggrieved of this, petitioner has filed the present petition against summoning order dated 15.05.2017 as well as order dated 25.08.2021 vide which the aforesaid application was declined.

Notice of the petition was given to the respondent but nobody appeared to contest this petition. I have heard the arguments advanced by learned counsel for the petitioner and have gone through the record carefully.

The learned counsel for the petitioner argued that no proper procedure was followed by the learned Sub Divisional Judicial Magistrate before summoning the respondent in the complaint under Domestic Violence Act. The learned counsel for the petitioner referred to the order dated 10.05.2017 (Annexure P-2) vide which report of the domestic incidental from protection officer was called for on the next date i.e. 15.05.2017. However, without receiving any report, the notice was issued to the respondent vide zimni order dated 15.5.2017 for 08.06.2017 which is Annexure P-3. It is argued that the learned Sub Divisional Judicial Magistrate was firstly to peruse the report of Protection officer and then only notice could have been issued to the respondent. The learned trial court has not followed its own order and notice was wrongly issued to the

respondent. The learned counsel for the petitioner further raised the issue that Rano is residing separately since 20.4.2009. The complaint was filed on 05.05.2017 after a gap of more than 08 years. The copy of the application under Section 12 of Protection of Women from Domestic Violence Act, 2005 is Annexure P-1. During this period, one FIR was registered against him under Sections 406, 498-A IPC. The said case was contested by the complainant but he was acquitted vide judgment dated 21.07.2017. The certified copy of the judgment is Annexure P-7. The petitioner also filed application under Section 125 Cr.P.C. which was allowed in favour of the wife and his son and he is making payment of maintenance regularly. Copy of order dated 12.07.2019 is Annexure P-10 in execution vide which the entire balance amount was paid by the petitioner to his wife and son. He has also placed on record one application under Section 127 Cr.P.C. seeking enhancement of maintenance filed by Rano pending for 21.09.2021. Copy of the said application is Annexure P-9. The petitioner has never defaulted in making payment of maintenance to his wife and son. Therefore, the present application filed by Rano under Section 12 of Protection of Women from Domestic Violence Act, 2005 is not maintainable and it is hopelessly time barred. The learned counsel for the petitioner has relied upon the citation, 2011(12) SCC 588, Supreme Court of India in case titled as **“Inderjit Singh Grewal Vs. State of Punjab**, the application under Sections 12, 28 and 32 of Protection of Women from Domestic Violence Act, 2005 could have been filed within a period of one year from the date of incident and it was further held that under Rule 15(6) provisions of Criminal Procedure Code are applicable”.

On this point, he has also relied upon another authority cited as 2020 (4) CTC 656, Madras High Court in case tilted as “**Lakshmi Narayanan Vs. Kamatchi**” wherein it was held that the wife ought to have filed a complaint under Domestic Violence Act within a period of one year from the date of incident”. It is argued that filing of application under Section 12 of Protection of Women from Domestic Violence Act, 2005 after a period of more than 08 years, is clear misuse of the process of law. Therefore, the summoning order dated 15.05.2017 passed by Sub Divisional Judicial Magistrate, Malerkotla and the order dated 25.08.2021 passed by Sub Divisional Judicial Magistrate, Malerkotla dismissing the application filed by the petitioner may kindly be set aside and the complaint filed by the complainant Rano under Section 12 of the Protection of Women from Domestic Violence Act, 2005, may be quashed.

I have considered the arguments advanced before me by learned counsel for the petitioner and have gone through the record carefully.

Some of the facts are admitted in the present case. Admittedly, Rano is the legally wedded wife of Hardeep Khan, petitioner and they are blessed with a son namely Mohd. Arif. It is further not disputed that on account of matrimonial dispute, FIR No.178 of 25.08.2009 was registered under Section 498A IPC, at Police Station City Malterkotla in which the challan was presented against Hardeep Khan on 08.12.2009 and ultimately, he was acquitted under Section 498A IPC vide judgment dated 21.07.2017. The certified copy of the judgment is Annexure P-7. It is further not disputed that Rano and her son Mohd. Arif filed petition under Section 125 Cr.P.C. claiming maintenance which was allowed vide order dated

19.10.2015. In this petition under Section 125 Cr.P.C., Hardeep Khan is making payment of maintenance. The certified copy of the order dated 12.07.2019 is Annexure P-10. There is another application under Section 127 Cr.P.C. for enhancement of maintenance, copy of the said application filed by Rano and her son is Annexure P-9. It is a fact that Rano filed application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against Hardeep Khan, petitioner on 05.05.2017 where she categorically stated that she was turned out of the matrimonial home along with her son on 20.04.2009 i.e. after a gap of about 08 years.

Now for the decision of present petition, the points for consideration are:

- [1] Whether the learned trial court could issue notice to the respondent in application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 without receiving the report of Protection Officer;
- [2] Whether the aforesaid application under Section 12 of Domestic Violence Act, is maintainable after acquittal of petitioner under Section 498A IPC and decision of petition under Section 125 Cr.P.C;
- [3] Whether the application filed by the petitioner under Section 12 of Protection of Women from Domestic Violence Act, 2005 is within the period of limitation or not?

Point 1

Firstly, I will deal with the arguments advanced by learned counsel for the petitioner where it is argued that the learned Sub Divisional Judicial Magistrate issued notice to the respondent without receiving the report of Protection Officer which is Annexure P-2. Section 2 (a) and (e) of

the Protection of Women from Domestic Violence Act, 2005 respectively defines the aggrieved person and the domestic incident report. The aggrieved person means any woman who is or has been in domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. The 'domestic incident report' means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person. The act of domestic violence is also defined in Section 3 of the aforesaid Act. As per Section 12 of the Domestic Violence Act, the application can be made to the Magistrate by “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”.

The aforesaid provision clearly indicates that the application could have been filed by the applicant herself with the assistance of an Advocate. In the case in hand, the application was filed by Rano, the applicant and it was not filed in the Court by any Protection Officer or the Service provider. In that situation, the report of Protection Officer regarding domestic incident report is not mandatory to be considered by the trial court. In support of this, there is authority of Hon’ble Supreme Court of India cited in 2022 AIR (Supreme Court) 2331, case titled as “**Prabha Tyagi** Vs. **Kamlesh Devi**” wherein para No.52 of the judgment it was clearly explained that Section 12 does not make it mandatory for Magistrate to

consider a Domestic Incident Report filed by a Protection Officer or service provider before passing any order under the Domestic Violence Act. It was further held that even in the absence of said report, Magistrate is empowered to pass both ex parte or interim as well as a final order under the provisions of the Domestic Violence Act. Considering the aforesaid facts, the objection raised by learned counsel for the petitioner does not hold any ground. Therefore, the learned Sub Divisional Judicial Magistrate has not committed any illegality or irregularity by issuing notice to the petitioner without waiting for the report of Protection Officer.

Point II

Secondly, the learned counsel for the petitioner has also questioned the maintainability of the application filed by Rano under Section 12 of the Protection of Women from Domestic Violence Act, 2005 on the ground that he was acquitted under Section 498A IPC vide judgment dated 21.07.2017 (Annexure P-7) and he also pointed out that he is making payment of maintenance granted in favour of his wife and son under Section 125 Cr.P.C. Therefore, the application filed by Rano under Section 12 of the Protection of Women from Domestic Violence Act, 2005 is not maintainable.

I have considered the stand taken by learned counsel for the petitioner. Admittedly, after marriage of Hardeep Khan with Rano on 06.01.2002 marital dispute started and ultimately, Rano along with her minor son came out of the matrimonial home on 20.04.2009. In the application filed by the applicant, Rano under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (Annexure P-1), she has

narrated about the incident dated 20.04.2009 when she was turned out of the matrimonial home. The petitioner was acquitted under Section 498A IPC which is a criminal case and it is to be proved by the prosecution beyond the shadows of reasonable doubt. The Court is to follow the procedure as prescribed under Cr.P.C. as well as Evidence Act. On the other hand, the application under Protection of Women from Domestic Violence Act, 2005 is of different nature. The intent of Legislature is to provide protection to a lady who is suffering domestic violence in the hands of her husband or any member of matrimonial home. The applicant can claim various reliefs by filing this complaint like maintenance allowance, rent for separate accommodation, damages and compensation etc. Therefore, more or less by filing application under Section 12 of the Domestic Violence Act, the aggrieved person can get various reliefs by filing one application. Rano-respondent/applicant is still legally wedded wife of the petitioner, Hardeep Khan and she is looking after her son alone. Therefore, it cannot be said that once the petitioner was acquitted under Section 498A IPC that will create a bar for his wife Rano to seek relief under the provisions of Protection of Women from Domestic Violence Act, 2005. On this point, there is authority of a Coordinate Bench cited in 2014 RCR Criminal 942, case titled as **“Geeta Kappor and another Vs. State of Haryana and another”** wherein it was reiterated that the proceedings under Section 12 of Domestic Violence Act, 2005 and the proceedings under Section 498A of Indian Penal Code are separate and different in nature. Therefore, arguments advanced by learned counsel for the petitioner, challenging the maintainability of application under Section 12 of Domestic Violence Act, filed by Smt. Rano

against the petitioner does not hold any ground. So far as payment of maintenance under Section 125 Cr.P.C. or other application under Section 127 Cr.P.C. will not effect the application filed under Section 12 of the Domestic Violence Act, 2005 as the respondent can claim maintenance under the one case subject to adjustment of maintenance already paid by him.

Point-III

Thirdly, it is argued that as per the version of respondent, she was turned out of the matrimonial home on 20.04.2009 and the present application under Section 12 of Domestic Violence Act, 2005 has been filed on 05.05.2017 after period of more than 08 years. It was argued that as per the provisions of Section 468 Cr.P.C. the complaint could have been filed within period of one year after the commission of offence.

The aforesaid factual position is not disputed. It is matter of record that Hardeep Khan was acquitted in the FIR registered against him under Section 498A IPC. He is also making payment of maintenance allowance as awarded under Section 125 Cr.P.C.. At the same time, it cannot be ignored that Rano is still legally wedded wife of the petitioner. She is facing agony of matrimonial dispute till date. The complaint filed by her under Section 12 of Domestic Violence Act, is to some extent civil in nature. In case, there is violation of any order passed under the provisions of Domestic Violence Act, 2005 that is held punishable under Section 13 of the Protection of Women from Domestic Violence Act, 2005. Therefore, mere filing of complaint under Section 12 of Domestic Violence Act cannot be barred under the provisions of Section 468 Cr.P.C. This section will come

into operation when any order passed under Section 12 of the Act is violated. On this point, there is authority cited in 2022(2) Civil Court Cases 769, Supreme Court of India, case titled as “**Kamatchi** Vs. **Lashmi Narayanan**” where it is clearly explained that limitation period provided under Section 468 Cr.P.C. is not applicable to the complaint filed under Section 12 of the Domestic Violence Act, 2005 where the judgment was passed by the Hon'ble High Court of Madras was set aside by accepting the appeal.

In view of the aforesaid discussion, I do not agree with the arguments advanced by learned counsel for the petitioner.

In view of my aforesaid discussion, the petition filed by the petitioner seeking quashing of complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and the subsequent orders as detailed therein, is dismissed.

20.12.2022
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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No