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

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

+ **CRL.M.C. 2422 of 2014**

Between:-

**KRISHAN CHAND GARG, S/O LATE SH. NATHU RAM
R/O S-15 & 16, 1ST FLOOR, SHIVAJI PARK,
NEW DELHI-110026**

.....PETITIONER NO.1

**KAILASH KUMARI, W/O SHRI K.C. GARG,
RESIDENT OF S-15 & 16, 1ST FLOOR, SHIVAJI PARK,
NEW DELHI-110026.**

.....PETITIONER NO.2

(Through: Ms.Dristi Bana and Ms.Shambhavi, Advocates.)

AND

**NIDHI GARG, W/O SHRI AJAY GARG.
R/O FLAT NO.702, TOWER NO.BT-10, OMAXE
HEIGHTS, SECTOR-86, FARIDABAD**

....RESPONDENT

(Through: Mr.Dinesh Priani, Advocate.)

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Pronounced on : 09.11.2022

J U D G M E N T

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) is directed against the order dated 23.04.2014, passed by the court of learned Additional Sessions Judge-03, West District, Delhi in Criminal Appeal No.18/2/14, whereby an

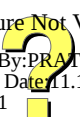
appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (DV Act) has been dismissed against the order of summoning dated 26.08.2013, passed by the learned Metropolitan Magistrate.

2. During the pendency of the instant petition, petitioner No.1 has expired. Therefore, his name is deleted from the array of parties. The petitioner No.1 was the father-in-law of the respondent and petitioner No.2 is the mother-in-law. Since petitioner No.1 has expired therefore, this petition is only confined to the mother-in-law.

3. The facts of the case are that respondent No.2 married the son of the petitioner, namely, *Ajay Garg* on 26.11.1995. On account of certain matrimonial dispute, on 30.05.2013, the respondent filed petition under Section 12 of the DV Act against the petitioners and the husband of respondent No.2.

4. On 26.08.2013, learned Metropolitan Magistrate directed for issuance of summons to both the petitioners. The petitioners challenged the order of summoning dated 26.08.2013, before the appellate court. The appellate court *vide* impugned judgment dated 23.04.2014 has dismissed the appeal, therefore, the petitioners are in the instant petition.

5. Learned counsel appearing on behalf of the petitioners submits that the order dated 26.08.2013, directing for issuance of summon against the petitioners is without application of mind. The same does not record any reason. The learned Metropolitan Magistrate only perused the Domestic Incident Report (DIR) and summons were directed to be issued against the petitioners. There was no discussion at all with respect to the allegation against the petitioner. He therefore, stated that the order dated 26.08.2013 suffers from legal



infirmity and therefore, the appellate court should have exercised its appellate power in setting aside the illegal order dated 26.08.2013.

6. The learned counsel appearing on behalf of the respondent however, opposed the prayer and submitted that no detailed order was required to be passed for summoning the petitioner. However, the learned Metropolitan Magistrate has passed the order after perusing the DIR. According to the learned counsel for the respondent, all submissions made by the petitioners have already been considered in the appeal and in paragraph Nos.5 & 6 of the impugned order passed by the appellate court, specific allegations against the petitioners have been noted. Since the appellate court does not find any substance and the matter has been examined in detail, therefore, in exercise of its power under Section 482 of the Cr.P.C., this court should not entertain the petition.

7. I have heard the learned counsel appearing on behalf of the parties and perused the record.

8. Learned counsel appearing on behalf of the parties submit that the trial of the case is going on and the evidence of the respondent is being recorded in the court of the learned Metropolitan Magistrate. A perusal of the order dated 26.08.2013, indicates that no detailed reason is given by the learned Metropolitan Magistrate while passing the said order. He simply stated that DIR is perused and, therefore, he directed for issuance of summons. It was incumbent upon the learned Metropolitan Magistrate, passing the order of summon to state the reason so as to understand what weighed with him to pass order of summoning. On this ground alone, this court would have been inclined to set aside the said order dated 26.08.2013. However, keeping in view the detailed reasoning given by the appellate court in paragraph Nos. 5 & 6, this court finds that there exists specific

allegation in the complaint made by the respondent with respect to domestic violence at the instance of the mother-in-law. Paragraph Nos.5 & 6 of the impugned order are being reproduced as under:

“5. So far as, the domestic relationship is concerned, any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to act of domestic violence by the respondent is an aggrieved person and the expression "domestic relationship" means a relationship between two persons who live or have, at any point of time lived together in a share household, when they are related by, consanguinity, marriage or through a relationship in a nature of marriage, adoption or are members of a family living together as a joint family. The complainant in Para 15 of her complaint has specifically stated that she was living with the present appellants in Delhi and the present appellants in reply to the complaint admitted that she was living with them after marriage.

6. So far as, the domestic violence is concerned, any act, omission or commission or conduct of the respondent shall amount to domestic violence and certain circumstances. It includes causing physical abuse, sexual abuse, verbal and emotional or economic abuse which are also explained in the Section. In determining whether any act, omission, commission or conduct or the respondent constitutes "domestic violence" the overall facts and circumstances of the case are the guiding factors. The present respondent has made specific allegations in her complaint in paras No. 2, 3, 4, 5, 6, 7, 12, 16, 18, 20, 54, 60 and 64. The proceedings under domestic violence are quasi criminal and domestic violence has been specifically alleged in the complaint”.

9. In view of the specific allegation in the complaint and the fact that the present proceedings relates to domestic violence by the mother-in-law also, this court refrains itself from exercising its powers under Section 482 of the Cr.P.C. under the peculiar facts of the instant case.

10. Accordingly, the instant petition stands dismissed. Needless to state that this court has not made any comments on the merits of the case either way.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

NOVEMBER 09, 2022
MJ

