

120 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-7739-2021 (O&M)

Date of Decision:12.05.2023

DEEPAK MADHOK AND OTHERS

..... Petitioners

Versus

NEHA MADHIOK @ NEHA BHASIN

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Abhinav Sood, Advocate with
Mr. Anmol Gupta, Advocate and
Ms. Deepika Sood, Advocate
for the petitioners.

Mr. Yogesh Goel, Advocate with
Mr. Lakshay Goel, Advocate
for the respondent.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioners through instant petition is seeking setting aside of complaint No.9386 of 2017 dated 04.08.2017 which has been filed by respondent under Sections 12,17, 18, 19, 20, 21 and 22 of Protection of Women from Domestic Violence Act, 2005 (for short 'DV Act') and is pending before Judicial Magistrate 1st Class, Ludhiana.

2. Learned counsel for the petitioners *inter alia* submits that there are more than 5 judgments of Co-ordinate Benches of this Court where relying upon judgment of Hon'ble Supreme Court in ***Ashish Dixit and Others Versus State of U.P. and Another; Criminal Appeal No.43 of 2013***, it has been held that petition under Section 482 Cr.P.C. is maintainable against petition filed under Section 12 of Protection of Women from Domestic Violence Act, 2005 (for short 'DV Act').

Doubting judgment of this Court in ***Jaspal Kaur alias Pinki and Others Vs. State of Punjab and Another, CRM-M-19553-2023 decided on 24.04.2023***, learned counsel for the petitioner submitted that matter needs to be referred to Full Bench. In support of his contention, he relied upon judgment of Co-ordinate Bench of this Court in ***Pawittar Jit Singh Rattan and Another Versus Dr. Preeti Singh; CRM-M-8942 of 2016***. He specifically pointed out paragraph Nos.6 and 7 of the said judgment which are reproduced as below:-

“6. The first question that requires to be determined is as to whether the instant petition is maintainable and whether the remedy under Section 29 of the DV Act would bar the invoking of the inherent power of this Court. 7. This question need not detain this Court. It is the settled position of law that power of the High Court under Section 482 of the Code is very wide and this Court in exercise of its inherent power can quash criminal proceedings not only where the allegations in the FIR/complaint do not disclose the commission of any offence nor make out a case against the accused, but also in case it comes to the conclusion that continuation of the criminal proceedings tantamounts to an abuse of the process. High Court of Karnataka in Mareppa and others Versus Pusapanjali Law Finder Doc Id#1928308 has held that Section 29 of the DV Act does not take away the right of the petitioners seeking an order under Section 482 of the Code wherein the petitioners have attributed that the very intitiation of the proceedings against them under the DV Act is an abuse of the process. This Court would, therefore, have the jurisdiction to entertain a petition under Section 482 of the Code and the statutory remedy of appeal under the DV Act would not be an embargo in exercise of such power.”

3. From the perusal of above quoted judgment, it is quite

evident that Co-ordinate Bench has exercised jurisdiction under Section 482 Cr.P.C assuming proceedings before Magistrate under Section 12 of DVT Act as criminal proceedings. The Court has not adverted with nature of proceedings pending before Magistrate under DV Act.

4. He further relies upon paragraph Nos.12 and 19 of judgment of Co-ordinate Bench of this Court in ***Om Parkash Syngal and Others Versus Shimla Garg; CRM-M-24058 of 2014***, which are reproduced as under:

“12. On the other hand the submission made on behalf of the respondent was that a quashing petition was not maintainable as the proceedings under the Domestic Violence Act were civil proceedings and the civil proceedings could not be quashed in a petition under Section 482 Cr.P.C. It was urged that the proceedings under this Act is a remedy under the civil law. Reliance was placed upon Vijaya Bhaskar vs. Suganya Devi, Crl. O.P. (MD) No. 10280 of 2010 decided on 28.10.2010, Dr. V.K. Vijaylekshmi Amma vs. Bindu and others, Crl. MC. No. 2225 of 2009 decided on 2.12.2009, Narendrakumar @ Nitinbhai Manilal Shah and others vs. State of Gujarat and others, Crl. Misc. application No. 19853 of 2013 decided on 17.01.2014, Md. Abdul Haque vs. Srimati Jesmina Begum Choudhury and another, Crl. Petition No. 434 of 2010 decided on 25.04.2012, Gaddameedi Nagamani vs. State of Telangana, Crl. Petition No. 22371 of 2015 decided on 17.07.2015, Maya Devi vs. State of N.C.T. of Delhi, 2007(4) JCC 2819 and Dr. Vinod Parashar and others vs. State of U.P. and another, 2009(1) RCR(Criminal) 992.

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19. So far as the submission of the respondent regarding the maintainability of the petition is concerned Hon'ble Apex Court in Ashish Dixit and others vs. State of

U.P. And another, 2013(2) RCR(Criminal) 340 had quashed the proceedings under the Domestic Violence Act. This Court in Girish and others vs. Poonam, 2013(1) RCR(Criminal) 767 had also quashed the proceedings under the Domestic Violence Act.”

5. From the perusal of paragraph 19 of the aforesaid judgment, it is quite evident that Coordinate Bench has primarily relied upon order of Hon’ble Supreme Court in Ashish Dixit’s case (supra). From the perusal of order of Hon’ble Supreme Court in Ashish Dixit’s (supra), it is evident that Hon’ble Supreme Court has not adverted with question of nature of proceedings before Magistrate under Section 12 of DV Act, thus, judgment of Hon’ble Supreme Court in Ashish Dixit (supra) cannot be treated as answer to question whether proceedings before Magistrate under Section 12 of DV Act are civil or criminal proceedings warranting interference under Section 482 Cr.P.C or under Article 227 of the Constitution of India.

6. He further relies upon Full Bench judgment of Hon’ble Bombay High Court in ***Nandkishor Pralhad Vyawahare Versus Sau. Mangala w/o Pratap Bansar; Criminal Application [Apl] No.578 of 2011***, wherein it has been held that petition under Section 482 Cr.P.C. against proceedings under DV Act is maintainable.

7. The Full Bench of Madras High Court in its judgment in ***Arul Daniel and Others Vs. Suganya 2022 SCC online Mad 5435*** has considered judgment of Full Bench of Bombay High Court in Nandkishor Pralhad (supra). This Court has passed order in ***Jaspal Kaur alias Pinki and Others Vs. State of Punjab and Another, CRM-M-19553- 2023 decided on 24.04.2023*** relying upon judgments of Hon’ble Supreme Court in ***Kamatchi Vs. Lakshmi Narayan 2022 SCC online SC 446 and***

Kunappareddy Vs. Kunappareddy Swarna Kumari (2016) 11 SCC 774
and Full Bench of Madras High Court in *Arul Daniel and Others Vs. Suganya 2022 SCC online Mad 5435*.

8. Neither there is any cogent reason nor does propriety demand that this Court should form an opinion contrary to earlier opinion or refer the matter to Full Bench.
9. In view of above facts and circumstances, the present petition is not maintainable and accordingly dismissed.
10. The petitioners are at liberty to avail remedies as permissible by law.
11. Pending application, if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

12.05.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>