

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

[123]

CRM-M-14342-2022

Date of Decision:10.02.2023

Ajit Singh and others

..... Petitioners

Versus

Harkiranpreet Kaur

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Ms. Divya Sharma, Advocate
for the petitioners.

JAGMOHAN BANSAL, J. (Oral)

The petitioners through instant petition under Section 482 are seeking quashing of application COMA-2957 of 2018 under Sections 12, 17, 18, 19, 20, 22 and 23 of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as '*the D.V. Act*') alongwith all consequential proceedings arising therefrom including notice dated 05.03.2019 issued by the Judicial Magistrate Ist Class, Ludhiana.

Learned counsel for the petitioners, *inter alia*, contends that allegations levelled in the complaint against the petitioners are false and fabricated. The petitioners are neither in the domestic relationship nor have shared residential accommodation with the complainant during last 16 years. The complainant is residing separate since October 2016. The complainant filed first complaint in 2012 which was withdrawn in 2012 itself and now complaint has been filed after 06 years. Thus, the complaint under D.V. Act, 2005 is abuse of process of law.

Learned counsel relied upon judgments of this Court in

Joginder Kaur and others Vs Shalini and another (CRM-M-34237-2020),

Pawittar Jit Singh Rattan and another Vs. Dr. Preeti Singh (CRM-M-

8942-2016) and Amit Aggarwal and others Vs. Sanjay Aggarwal and others (2016) 3 RCR (Civil) 468 as well as one judgment of Madhya Pradesh High Court (Indore Bench) in Kuldeep Singh and others Vs. Rekha (decided on 18.06.2019)

I have heard the arguments and perused the record.

From the perusal of the impugned order, it comes out that the trial Court has simply issued notice to the petitioners. The Court has not applied its mind. No order qua relief sought by respondent leaving aside adverse order against the petitioners has been passed. They have been simply called upon to file reply. The petitioners are going to get full and fair opportunity to put forth their contentions. The petitioners have remedy to file appeal against order passed by Magistrate. Section 29 of D.V. Act provides for remedy of appeal against order of Magistrate. Section 29 reads as:-

“29. Appeal.—There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.”

A two Judges' Bench of Hon'ble Supreme Court in “Kamatchi Vs. Lakshmi Narayanan” 2022 SCC Online SC 446 has held that ratio of judgment of Hon'ble Supreme Court in Adalat Prasad vs Rooplal Jindal & Others 2004 (7) SCC 338 is not applicable to a notice issued under Section 12 of D.V. Act. The relevant findings recorded by Hon'ble Supreme Court read as:

“29. It is thus clear that the High Court wrongly equated filing of an application under Section 12 of the Act to lodging of a complaint or initiation of prosecution. In our considered view, the High Court was in error in observing that the application under Section 12 of the Act ought to have been filed

within a period of one year of the alleged acts of domestic violence.

30. It is, however, true that as noted by the Protection Officer in his Domestic Inspection Report dated 2.08.2018, there appears to be a period of almost 10 years after 16.09.2008, when nothing was alleged by the appellant against the husband. But that is a matter which will certainly be considered by the Magistrate after response is received from the husband and the rival contentions are considered. That is an exercise which has to be undertaken by the Magistrate after considering all the factual aspects presented before him, including whether the allegations constitute a continuing wrong.

31. Lastly, we deal with the submission based on the decision in ***Adalat Prasad***. The ratio in that case applies when a Magistrate takes cognizance of an offence and issues process, in which event instead of going back to the Magistrate, the remedy lies in filing petition under Section 482 of the Code. The scope of notice under Section 12 of the Act is to call for a response from the respondent in terms of the Statute so that after considering rival submissions, appropriate order can be issued. Thus, the matter stands on a different footing and the dictum in ***Adalat Prasad*** would not get attracted at a stage when a notice is issued under Section 12 of the Act.”

From the perusal of the judgment of Hon'ble Supreme Court, it is quite evident that scope of notice under Section 12 of D.V. Act is to call for a response from the respondent so that an appropriate order may be passed. An application under Section 12 cannot be equated with complaint or initiation of prosecution. Notice by Magistrate under Section 12 of D.V. Act is not like cognizance of offence or issue of process by Magistrate warranting petition under Section 482 Cr.P.C. There is no adverse order against the petitioners. In the absence of any adverse order, it is not appropriate on the part of this Court to exercise its extraordinary jurisdictional power to quash the complaint which is mere a bundle of

allegations. The petitioners are certainly going to get an opportunity to an file reply as well as put forth their defence. They have further remedy to file appeal before Sessions Court. There are no extraordinary circumstances warranting invoking of jurisdiction under Section 482 Cr.P.C. The judgments cited by learned counsel do not provide that High Court is bound to entertain petition under Section 482 against complaint filed under Section 12 of D.V. Act.

Keeping in view the facts and circumstances of the case, no ground is made out to invoke extraordinary jurisdiction of this Court. The present petition deserves to be dismissed and accordingly dismissed.

Nothing mentioned herein shall be construed as opinion of this Court and Magistrate shall proceed without being influenced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

10.02.2023
Anjal

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