

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M No.28221 of 2021
Date of Decision: 20.10.2023
Reserved on: 18.10.2023

Kavita Kumari

... Petitioner

Versus

Hem Prabha

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Gautam Thapar, Advocate,
for the petitioner.

Mr. Raman Mahajan, Advocate,
for the respondent.

MANISHA BATRA, J.

1 The present petition under Section 482 Cr.P.C has been filed by the petitioner for quashing of the criminal complaint bearing No. COMA-82 of 2020 titled as *Hem Prabha vs. Saurabh Vashishta and others*, filed under the provisions of Protection of Women from Domestic Violence Act, 2005 (For short “DV Act”) as pending before the Court of Learned Judicial Magistrate, Kharar.

2. The aforementioned complaint has been filed by the respondent-Hem Prabha against her husband, mother-in-law, brother-in-law and the present petitioner respectively alleging that her husband has been living in adultery with the present petitioner. Several other allegations have been levelled and prayer has been made by the respondent for restraining her husband from causing any act of domestic violence upon her and further directing him to let her stay in her

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matrimonial house. It has been specifically submitted in the complaint that the present petitioner (impleaded as respondent No.4 in the complaint) has been impleaded as a party as the husband is leading adulterous life with her which amounts to act of domestic violence. Prayer has also been made for directing her husband to provide monetary assistance.

3. It is submitted by the present petitioner that she is a single mother with a 1 ½ years old infant and she is working in multinational company at Delhi and is posted as Accounts Manager. The husband of the respondent is also working in the same company. The respondent is a stranger to the petitioner and both of them have never come into contact with each other and she has never shared household with the respondent nor any act or omission amounting to act of domestic violence has been committed by her as against the respondent. While claiming that she does not fall within the definition of “respondent” with the meaning of DV Act nor the respondent is a ‘person aggrieved’ qua the petitioner, prayer has been made by the petitioner for quashing the aforementioned complaint and all the consequential proceedings arising therefrom.

4. Learned counsel for the petitioner contended that since the petitioner did not fall within the definition of “respondent” as defined under Section 2 (q) of DV Act and since there is no allegation that she was in domestic relationship with the respondent and as the respondent could not be stated to be a person aggrieved qua the petitioner for the purpose of the aforementioned complaint, therefore, she had wrongly been called upon by the Magistrate and it was, therefore, urged that the proceedings initiated against the petitioner deserved to be quashed. In support of his contentions,

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Chandubhai Padsala vs. State of Gujarat and another, 2012(28) R.C.R. (Criminal) 79.

5. Learned counsel for the respondent, on the other hand, argued that the petitioner was living with the husband of the respondent in a live-in-relationship. Even a male child was born out of the said relationship during the subsistence of marriage between the respondent and her husband. The husband of the respondent was under the complete control of the petitioner and had committed several acts of domestic violence. As such the act and conduct of the petitioner also certainly amounted to act of domestic violence. He further argued that the petition under Section 482 of Cr.P.C. was not maintainable as the proceedings under Section 12 of the DV Act were civil in nature. Therefore, it was argued that the same was liable to be dismissed. To buttress his argument, learned counsel for the respondent placed reliance upon **Kunappareddy v. Kunappareddy Swarna Kumari**, (2016) 11 SCC 774 and **Arul Daniel and others v. Suganya**, 2022 SCC Online Mad 5435.

6. I have heard learned counsel for the parties at considerable length and have perused the material available on record.

7. In the backdrop of the facts and contentions as noted above, the first and the foremost question that arises for determination before this Court is as to whether it is permissible for this Court to exercise powers under Section 482 of the Code in respect of the proceedings initiated under Section 12 of the DV Act as against the petitioner. As per the contention raised by the petitioner since she does not fall within the definition of “respondent” as defined under Section 2 (q) of the DV Act, therefore, she cannot be

arraigned as a respondent in the complaint whereas according to the

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respondent, the petition under Section 482 of the Code is not maintainable as the proceedings are civil in nature.

8. In **Jalpaben Chandubhai Padsala's** case (Supra) which has been relied upon by learned counsel for the petitioner, the High Court of Gujarat while dealing with a petition under Section 482 of the Code filed by the petitioner who was alleged to have been kept by the husband of respondent in his house, had observed that the petitioner did not fall within the definition of respondent as defined under Section 2 (q) of the DV Act, had allowed the petition. It was also observed that the inherent powers under Section 482 of the Code could be exercised in the matter. However, reference can be made to **Kamatchi Vs. Lakshmi Narayanan**, 2022 SCC Online SC 446 wherein the Hon'ble Supreme Court had observed that the ratio of judgment passed in **Adalat Prasad vs Rooplal Jindal & others**, 2004 (7) SCC 338 was not applicable to a notice issued under Section 12 of the DV Act as the same applied when a Magistrate took cognizance of an offence and issued process, in which event instead of going back to the Magistrate, the remedy lied in filing petition under Section 482 of the Code. It was further observed that the scope of notice under Section 12 of the DV Act was to call for a response from the respondent in terms of the statute so that after considering rival submissions, appropriate order can be issued and, therefore, filing of an application under Section 12 of the DV Act could not be equated to lodging of a complaint or initiation of prosecution.

9. Reference can also be made to another Apex Court decision in **Kunappareddy's** case (Supra) wherein it was observed that the proceedings under the DV Act were predominantly of civil nature. Infact the very

purpose of enacting the DV Act was to provide for a remedy which was an

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amalgamation of civil rights of the complainant i.e. aggrieved person. It was held that the intention was to protect women against violence of any kind especially that occurring within the family as the civil law did not address this phenomenon in its entirety. The purpose of enacting the law was to provide a remedy in the civil law for protection of women from being victims of domestic violence and to protect occurrence of domestic violence in the society. The Hon'ble Supreme Court further observed that the scheme of the DV Act provided that in the first instance, the order that would be passed by the Magistrate, on a complaint by the aggrieved person would be of a civil nature and if the said order is violated, it assumes the character of criminality.

10. A Full Bench of Madras High Court in **Arul Daniel and others's** case (Supra) while relying upon plethora of judgments has held as follows:-

“(i) An application made under Section 12 of DV Act read with Rule 6(1) of DV Rules is not a complaint as defined under Section 2 (d) of Cr.P.C.

(ii) The procedure for cognizance prescribed under Section 190 Cr.P.C is not applicable to a proceeding under DV Act. The respondents before Magistrate are not accused, thus, a notice fixing a date of hearing is issued under Section 13 of DV Act. It is a notice and not summons under Section 61 Cr.P.C.

(iii) A proceeding under Chapter IV of DV Act is not a criminal proceeding and a Magistrate exercises civil jurisdiction while granting one or more reliefs under Sections 18-23 of DV Act. A Magistrate exercising jurisdiction under Section 12 of

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DV Act is not a criminal Court.

(iv) A petition under Section 482 of Cr.P.C. is not maintainable against an application under Section 12 of DV Act. The proceedings 12 of DV Act, are civil proceedings, thus, petition under Section 482 of Cr.P.C. is not maintainable. A petition under Article 227 of the Constitution of India is maintainable on limited ground of patent lack of jurisdiction.

(v) Personal appearance of respondents should not be ordinarily insisted upon, if the parties are effectively represented through a counsel.

(vi) If the respondent does not appear either in person or through a counsel, in reply of notice under Section 13, the Magistrate may proceed to determine the application exparte.

(vii) It is not mandatory for the Magistrate to issue notice to all parties arrayed as respondents in an application under Section 12 of DV Act. The Magistrate should apply his mind and in all cases involving distant relatives and other third parties. The Magistrate must set out reasons that have compelled him to issue notice to such parties.

(viii) As there is no process as contemplated under Section 204 Cr.P.C in a proceeding under DV Act, the principle laid down in **Adalat Prasad** (supra) is not applicable.

(ix) It is open to an aggrieved respondent to approach Magistrate and raise the issue of maintainability and other preliminary issues.

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(x) An aggrieved party may take recourse to section 25 which authorizes Magistrate to alter, modify or revoke any order under the Act.

(xi) It is open to respondents, at any stage of the proceeding, to apply to Magistrate to have their names deleted from the array of respondents, if they have been improperly joined as parties.

(xii) The Magistrate can draw sustenance from the power under Order I Rule 10 (2) of C.P.C. A judicious use of power would ensure that the proceedings under DV Act do not generate into a weapon of harassment and would prevent the process of Court from being abused by joining all and sundry as parties to the lis.

(xiii) Neither revision to High Court under Section 397 Cr.P.C. nor a petition under Section 482 Cr.P.C is maintainable against an order of Sessions Court under Section 29 of DV Act because appeal is continuation of original proceeding and original proceeding bears a civil character, thus, it is impossible to term an appeal arising out of such a case as a criminal proceeding.

11. In view of the ratio of law as laid down in the above cited judgments, it clearly emerges that the principles of law as culled out by Hon'ble Supreme Court qua the proceedings under Section 12 of the DV Act are that the same are civil in nature and, therefore, a petition under Section 482 of Cr.P.C. is not maintainable against petition under Section 12 or

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application/complaint under Section 12 of DV Act against the petitioner and the Magistrate has issued notice to her. In view of the law as laid down by Hon’ble Supreme Court that it has been discussed above, the present petition cannot be stated to be maintainable. Therefore, the same is dismissed. However, it is also observed that the petitioner is at liberty to move appropriate application on the ground of maintainability before the concerned Magistrate who shall pass an appropriate order qua maintainability of petition under Section 12 of DV Act against the petitioner, if such application is moved by the petitioner including the determination of the question as to deletion of her name from the array of the respondents and maintainability of the petition qua her.

20.10.2023
Jyoti-IV

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No