

In the High Court of Punjab and Haryana at Chandigarh

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CRM-M-26469 of 2022

Date of Decision: 15.02.2023

Amarjeet Kaur and others

---Petitioners

versus

State of Punjab and another

---Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Krishan Singh, Advocate
for the petitioners
Mr. Amish Sharma, AAG, Punjab

JAGMOHAN BANSAL, J. (ORAL)

The petitioner, through the instant petition, is seeking quashing of Complaint No. COMA/122/2021 dated 21.10.2021 (Annexure P-1) under Sections 12(1), 18, 19, 20, 21 and 22 of the Protection of Women from Domestic Violence Act, 2005 titled “Agampreet Kaur @ Rinki vs. Amarjit Singh and others” and summoning order dated 26.11.2021 (Annexure P-2) whereby notice has been issued to the petitioners.

Learned counsel for the petitioners fairly concedes that except simple notice calling upon the petitioners to appear before trial Court, no adverse order qua maintenance, protection or accommodation has been passed against the petitioners. He submits

that personal appearance of the petitioners before the trial Court may be exempted and they may be allowed to appear through counsel.

I have heard learned counsel for the petitioners and perused the records.

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.”*

In view of above-cited judgment of Hon'ble Supreme Court and statement of learned counsel for the petitioners, the present petition is disposed of, at this stage, with the following directions:-

1. The personal appearance of the petitioners before the trial Court shall remain exempted;
2. The petitioners shall appear before trial Court as and when specifically called by trial court;
3. The petitioners shall not raise grievance on the sole ground of absence, if any adverse order is passed in their absence.

The petitioners shall be at liberty to avail remedy as permissible by law, if any adverse order is passed against the petitioners.

(JAGMOHAN BANSAL)
JUDGE

15.02.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No