

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-57760-2023

Date of decision: 13th December, 2023

Suman Choudhary and another

...Petitioner(s)

Versus

Samir Vasan and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Karan Nehra, Advocate for the petitioners.

MANISHA BATRA, J:-

The present petition under Section 482 Cr.P.C has been filed by the petitioners for quashing of the criminal complaint bearing No. COMA-442, dated 03.08.2022 alongwith Form No.1 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (For short "DV Act").

2. The aforementioned complaint has been filed by the present respondents No. 2 and 3-complainants against the present petitioners who are their maternal grandparents and respondent No.4 who is their mother alleging that they have been looked after by their father. Their mother has shunned her responsibilities qua them and subjected them to social isolation and shaming thereby damaging their childhood. Prior to 15.10.2018, they used to reside in Jalandhar alongwith their parents. Their mother has deserted them. They shared household with the present petitioners on several occasions and had been subjected to cruelty at their hands. Several other

allegations have been levelled by them against the present petitioners and their mother and prayer has been made for restraining the present petitioners and their mother i.e. respondent No.4 from dispossessing them from the shared household for grant of monetary relief and for not interfering in their custody with their father. The present petitioners have submitted that they are residents of Karnal. The respondents No. 2 and 3 are their grand children. Respondent No.4 who is their daughter had studied at Delhi University where she had developed liking for the respondent No.1. Their marriage was solemnized on 25.11.2003. Huge amount of money was spent by them in the marriage to meet with the demands of respondent No.1 and his family members. On account of cruel behaviour of respondent No.1 and his family members towards the respondent No.4, she had started living separately from him. She had filed a divorce petition against the respondent No.1 and thereafter the respondents No. 2 and 3 filed the aforementioned complaint under the provisions of DV Act.

3. It is submitted that they are old aged persons who are suffering from several age related ailments. The petitioner No.1 is also suffering from severe back problem and has to remain on bed for most of the time. They have never shared household with respondents No. 2 and 3. Nor any act or omission amounting to act of domestic violence has been committed by them as against the respondents No. 2 and 3. Neither they fall within the definition of respondent within the meaning of DV Act nor respondents No. 2 and 3 are persons aggrieved qua them and accordingly, prayer is made for quashing the aforementioned complaint and all the consequential proceedings arising therefrom qua them.

4. Learned counsel for the petitioners has 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 they were in domestic relationship with respondents No. 2 and 3 and as respondents No. 2 and 3 could not be stated to be persons aggrieved qua the petitioners for the purpose of the aforementioned complaint, therefore, they had wrongly been summoned by the Magistrate and it is, therefore, urged that the proceedings initiated against the petitioners deserve to be quashed. In support of his contentions, learned counsel for the petitioners has placed reliance upon ***Jalpaben Chandubhai Padsala vs. State of Gujarat and another, 2012(28) RCR Criminal) 79.***

5. I have heard learned counsel for the petitioners at considerable length.

6. The first and the foremost question that arises for determination before this Court is as to whether the petition under Section 482 of Code is maintainable in respect of the proceedings initiated under Section 12 of the DV Act as against the petitioners and it is permissible for this Court to exercise its powers under this Section. In ***Kunappareddy v. Kunappareddy Swarna Kumari, (2016) 11 SCC 774***, the Hon'ble Supreme Court had 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 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.

7. Reference can then be made to the observations made by a Full Bench of High Court of Madras in *Arun Daniel and others v. Suganya*, 2022 SCC Online Mad 5435 wherein while relying upon plethora of judgments it had been 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 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 *ex parte*.

(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.

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 1 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.”

8. In view of the ratio of law as laid down in the above cited judgments, it clearly emerges that the proceedings under Section 12 of the DV Act are civil in nature and, therefore, a petition under Section 482 of Cr.P.C. is not maintainable against complaint filed under Section 12 or notice issued under Section 13 of the DV Act. The respondents No. 2 and 3 have filed application/complaint under Section 12 of DV Act against the petitioner and the Magistrate has issued notices to them. In view of the law as laid down by Hon'ble Supreme Court that has been discussed above, the present petition cannot be stated to be maintainable. Therefore, the same is dismissed.

9. However, it is observed that the petitioners will be at liberty to move appropriate application on the ground of maintainability of petition under Section 12 of DV Act qua them and if such application is moved by

the petitioners including the determination of the question as to deletion of their names from the array of the respondents and maintainability of the petition qua them, then the Magistrate shall decide the same expeditiously.

[MANISHA BATRA]
JUDGE

13th December, 2023

Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |