



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Reserved on : 03.03.2023**

**Pronounced on : 01.06.2023**

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+ **CRL.REV.P. 231/2020**

**NEHA CHATURVEDI**

.....Petitioner

Through: Mr. R. Gopal, Advocate.

versus

**STATE & ANR.**

.... Respondents

Through: Ms. Priyanka Dalal, APP for the State.

Ms. Niharika Ahluwalia, Ms. Ishita Deswal and Mr. Arpit Sharma, Advocates for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE RAJNISH BHATNAGAR**

**JUDGMENT**

**RAJNISH BHATNAGAR, J.**

1. The present revision petition U/s 397, 401 R/w Section 482 Cr.P.C. has been filed by the petitioner with the following prayers:

*“(a) Set-aside the impugned order dismissing the Complaint-Case of the Petitioner, CT Case 3883/2018, under section 31, Protection of Women from Domestic Violence Act, 2005, titled Neha Chaturvedi Vs. Gagan Chaturvedi, by the Learned Ms. Ritu Singh, hon'ble Court of the Metropolita Magistrate, MM-02 (East), Karkardooma District Courts, Delhi, dated 18-12-2019;*

*(b)Call for the record of the CT Case 3883/2018, under section 31 of the Protection of Women from Domestic Violence Act, 2005,*

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*titled Neha Chaturvedi Vs. Gagan Chaturvedi, by the Ld. Ms. Ritu Singh, Metropolitan Magistrate, MM-02 (East), Karkardooma District Courts, Delhi, not yet consigned to the Record Room;*

*(c) Call for the record of the disposed of case of the Petitioner under section 12 of the DV Act titled Neha Chaturvedi Vs. Gagan Chaturvedi and another. No. 58V/13, by Learned Ms. Richa Parihar, MM-02 (East), Karkardooma District Courts, Delhi, on 27.11.2014, from the Ld. Ms. Ritu Singh, the successor Presiding Officer, MM-2 (East), Karkardooma District Courts, Delhi; and*

*(d) Pass such other and further order/s that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."*

2. The petitioner by way of the present revision petition has challenged the impugned order dated 18.12.2019 passed by the Ld. Metropolitan Magistrate, Mahila Court-02/East District, Karkardooma Court, Delhi vide which the Ld. MM, Mahila Court-02 has dismissed the complaint filed by the petitioner U/s 31 (1) of Protection of Women from Domestic Violence Act, 2005. This complaint had been filed by the petitioner for the prosecution of accused husband on the ground that he had committed breach of protection order dated 27.11.2014 vide which the Ld. MM Mahila Court, East District had disposed of the application filed by the petitioner under Section 12 of Domestic Violence Act, 2005 on account of mediation settlement between the parties.

3. The said application under Section 12 of Domestic Violence Act, 2005 was disposed of by the Ld. MM Mahila Court, East District as per the terms and conditions of the mediation settlement. The petitioner has alleged that her husband (respondent No.2 herein) has failed to comply with the



terms of the mediation settlement and again indulged into domestic violence which led to filing of a subsequent complaint under Section 31 (1) of Protection of Women from Domestic Violence Act, 2005. This complaint has been dismissed by the Ld. Metropolitan Magistrate, Mahila Court-02/East District, Karkardooma Court, Delhi vide impugned order dated 18.12.2019 which is under challenged in the present revision petition.

4. I have heard the Ld. counsel for the petitioner, Ld. APP for the State, Ld. counsel for the respondent No. 2 and perused the records of this case.

5. The relevant para of the impugned order dated 18.12.2019 reads as follows:

*“According to section 18 of PWDV Act a protection order shall be passed by Court only after hearing aggrieved party and respondent, on being prima facie satisfied that domestic violence has been taken place or is likely to take place against aggrieved person. However, perusal of order dated 2.11.2014 shows that in present case on 27.11.2014, after receipt of mediation settlement dated 27.04.2014 statement of both parties were recorded that they would abide by terms of mediation settlement and in view of settlement and statement of both parties, main application u/12 PWDV Act was disposed off in terms of mediation settlement by Ld. Predecessor of this Court. There is nothing in order dated 27.11.2014 to suggest that Ld. Predecessor of this Court had passed any specific protection order against respondent in terms of mandate of section 18 of PWDV Act after recording her prima facie satisfaction that domestic violence has taken place or is likely to take place against petitioner herein. Instead order dated 27.11.2014 was passed on basis of mediation settlement dated 27.11.2014 and in these circumstance, order dated 27.11.2014 of Ld. Predecessor of this Court cannot be deemed as protection order as envisaged u/s 18 of PWDV Act.*

*Section 31(1) of PWDV Act is attracted only in case of breach of protection order or interim protection order by respondent and since it entails penal consequences against the respondent, therefore, specific protection orders have to be shown to have been breached by the*



*respondent, so as to attract section 31 PWDV Act against respondent. Therefore, in view of aforesaid observation of this Court, since there was no specific protection order passed by Ld. Predecessor of this Court against respondent/husband on 27.11.2014, on question of breach of protection order arise in this case. Accordingly, in view foregoing discussions, application/complaint u/s 31 (1) of Protection of Women From Domestic Violence Act (PWDV Act) filed by the applicant stands dismissed as not maintainable.*

*File be consigned to record room after due compliance.”*

6. Section 31 of the Protection of Women from Domestic Violence Act, 2005 reads as follows:

***"31. Penalty for breach of protection order by respondent.— (1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.***

***(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.***

***(3) While framing charges under sub-section (1), the Magistrates may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions."***

7. Ld. MM in the impugned order has observed that Section 31 (1) of PWDV Act is attracted only in case of breach of protection order or interim protection order by the respondent. It is further observed in the impugned order that since the breach entails penal consequences, therefore specific



protection order have to be shown to have been breached by the respondent. Since no specific protection order was passed against the respondent (husband) on 27.11.2014, so the Ld. MM observed that in these circumstances, there was no question of breach of protection order. So accordingly, the application/complaint U/s 31 (1) of PWDV Act filed by the petitioner was dismissed.

8. At the outset, Ld. counsel for the respondent No. 2 has challenged the maintainability of the revision petition in the present form and has submitted that the revision petition is not maintainable as the specific right of appeal is provided in Section 29 of the PWDV Act.

9. Section 29 of the Protection of Women from Domestic Violence Act, 2005 reads as follows:

*"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."*

10. ***In K. Rajendran & Ors. Vs. Ambikavathy, 2013 SCC Online Mad 116 : (2019) 3 DMC 202***, it has been held as follows:-

*"46. As far as the present case is concerned, as against the impugned order dated 21.09.2012 passed in D.V.O.P.No.29 of 2012, the Revision Petitioners are to prefer only Statutory Appeal as per Section 29 of the Act. It is a viable efficacious, effective and alternative remedy., as opined by this Court. In the instant case, obviously, the Petitioners have not filed any petition seeking alteration, modification or revocation of the order passed by the Learned Judicial Magistrate in D.V.O.P.No.29 of 2012 dated 21.09.2012 without seeking alteration, modification or revocation of the order so passed in D.V.O.P.No.29 of 2012 dated 2.09.2012 by the Learned Judicial Magistrate and also not filing the Statutory Appeal under Section 29 of the Act, the Petitioners have directly approached this Court by filing the instant Criminal*



*Revision petition under Section 397 and Section 401 of Cr.P.C. Only when a Revision is filed as against the judgment or order passed by the Court of Session in Appeal as per Section 29 of the Act, then only, the right of availing the procedural facility of filing the Revision is available to the Petitioners, in the considered opinion of this Court. When a statutory right of filing an Appeal is provided to the Petitioners (as per Section 29 of the Act), then this Court is of the considered view that the Petitioners cannot invoke the Revisional Jurisdiction of this Court under Section 397 read with 401 of Cr.P.C.”*

11. Similarly, in ***Prabhunath Tiwari & Anr. Vs. State of U.P. & Anr. 2012 SCC Online All 3172***, it has been held as follows:

*“Moreover, as the proceedings under Section 31 of the Protection of Women from Domestic Violence Act, 2005 are governed by the provisions of the Code of Criminal Procedure, 1973 a revision would be maintainable before the High Court against the appellate order passed by a Court of Session in exercise of power under Section 29 of the Act.”*

12. Therefore, in my opinion, since the statutory right of filing the appeal is provided to the petitioner as per Section 29 of the PWDV Act, therefore, petitioner cannot invoke the revisional jurisdiction of this Court U/s 397 and 401 of Cr.P.C. as the petitioner has an equal efficacious remedy by way of challenging the impugned order by way of appeal. With these observations, the revision petition is dismissed. All pending applications (if any) are disposed of.

**RAJNISH BHATNAGAR, J**

**JUNE 01, 2023**

*Sumant*