



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 244 OF 2024

PETITIONER : Sangita W/o. Ajit Popali, Age 44
Years, Occ. Household, R/o. Sindhi
Camp, Near Anandpur Hall, Akola,
Tq. & District Akola.

//VERSUS//

RESPONDENTS : 1. Pradeepkumar Dayaldas Sadane, Age
54 Years, Occ. Business, R/o. Mamta
Kapad Center, Near Teunram School,
Kumar Nagar, Sakri Road, Dhule,
Dist. Dhule.

2. Sau. Roma W/o. Maheshkumar
Chandwani, Aged about 51 Years,
Occ. Household.

3. Sau. Pooja W/o. Ashokumar
Chandwani, Aged about 51 Yeas, Occ.
Household.

Both R/o. 7, Shivsagar Park, Sakri
Road, Dhule, Dist. Dhule.

Mr. Nikhil A. Parwani, Advocate for the Petitioner.

CORAM : G. A. SANAP, J.
DATED : 3rd JULY, 2024.

ORAL JUDGMENT

. **RULE.** Rule made returnable forthwith. Heard finally with the consent of learned advocate for the petitioner. The respondents, though served, have failed to appear.

02] In this petition, challenge is to the order dated 28th December, 2023, passed by the learned Additional Sessions Judge, Akola, whereby the learned Judge allowed the revision application filed by the respondents and discharged them in Summary Criminal Case No.3878/2022 by setting aside the order passed by the learned Magistrate rejecting their application for their discharge.

03] The petitioner has filed the proceeding under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, "DV Act"). In the said proceeding, she applied for a protection order. The protection order was passed in her favour on 31.10.2020. As per clause (3) of the said protection order, the respondents were directed not to dispose of the immovable property mentioned in the said application till the disposal of the DV Act proceeding. The petitioner contended before the Magistrate that the immovable property was sold in breach of the protection order. According to the petitioner, the breach of the said

order constituted an offence punishable under Section 31 of the DV Act. She filed a complaint under Section 32 of the DV Act. The learned Magistrate, vide order dated 23.02.2023, took cognizance of the said offence and issued a process against the respondents. It was registered as Summary Criminal Case No.3878/2022.

04] The respondents appeared before the learned Magistrate in the said proceeding and filed an application at Exh.21 for their discharge. The learned Magistrate, after granting an opportunity of hearing to the parties, rejected the said discharge application vide order dated 23.02.2023. The learned Magistrate, by placing reliance on a decision in the case of ***Adalat Prasad Vs. Rooplal Jindal and Ors. [(2004) 7 SCC 338]***, has held that the Magistrate has no power to recall the order of issuance of process. The learned Magistrate also recorded a categorical finding that the material on record is *prima facie* sufficient to establish the breach of the protection order.

05] The respondents, being aggrieved by this order, filed the revision application in the Sessions Court at Akola. The learned Additional Sessions Judge, without considering the issue of the

maintainability of an application for discharge in a summary criminal case, has allowed the discharge application and discharged the respondents from the said criminal case. The petitioner has challenged the said order before this Court. The respondents, as is evident from the record, have been duly served. Sufficient time has been granted to them to report their appearance. Despite granting sufficient time, they have not appeared.

06] I have heard learned advocate for the petitioner. Perused the record and proceedings.

07] The principal submission of the learned advocate for the petitioner is that the procedure for summary criminal case has been provided in Chapter XXI of the Code of Criminal Procedure, 1973 (for short, “Cr.PC”). Learned advocate submitted that there is no provision for discharge in a summary criminal case. Learned advocate submitted that, therefore, the order passed by the learned Magistrate was in accordance with the law. Learned advocate submitted that in the exercise of revisional jurisdiction, the learned Additional Sessions Judge was only required to examine whether the order suffers from the perversity or illegality. Learned advocate submitted that the learned Additional Sessions Judge was not

empowered to expand the scope of the procedure for trial of the summary criminal case while exercising revisional jurisdiction.

08] In case of breach of the protection order, the aggrieved party has a right to file a complaint. The penalty for breach of the protection order has been provided under Section 31 of the DV Act. The breach of the protection order is a cognizable offence. The procedure for cognizance has been set out in Section 32 of the DV Act. As per Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006, it has been provided that the offence punishable under Section 31 shall be tried as a summary proceeding in accordance with the provisions of Chapter XXI of the Cr.PC. It is not out of place to mention that no separate procedure for trial has been provided under the DV Act so as to enable the accused to apply for discharge.

09] In view of this, the order passed by the learned Additional Sessions Judge has to be considered. The learned Judge, in paragraph 7 of the impugned order, has observed that while acting under Section 397 of the Cr.PC, he is bound to ensure that there is no irregularity or illegality in the proceeding conducted before the learned Magistrate. The learned Additional Sessions

Judge observed that the proceeding could not have been initiated against respondent Nos.2 and 3. In my view, the learned Additional Sessions Judge has committed a mistake by expanding the scope of the procedure for a summary trial. The learned Magistrate, as held by the Hon'ble Apex Court in the case of *Adalat Prasad Vs. Rooplal Jindal and Ors. (supra)*, was not empowered to either review or recall the order of issuance of process. The proceeding, being a summary proceeding, is required to be conducted by following the procedure for a summary trial prescribed under Chapter XXI of the Cr.PC.

10] It is to be noted that the cognizance was taken by the learned Magistrate on a complaint filed by the petitioner. On perusal of Chapter XXI read with Chapter XX, I am satisfied that there is no provision in these two chapters which provide for a stage of discharge or a right to the accused to apply for discharge. Section 258 of the Cr.PC is applicable in a summons-case instituted otherwise than upon a complaint. The procedure has been prescribed for a summary trial in this chapter with a particular object in mind. The provision for discharge, which has not been specifically provided in Chapters XXI and XX of the Cr.PC, cannot be held to be a part of these two chapters by drawing an inference

as to the patent defect in the proceeding. Even if there is a patent defect in the proceeding, in my view, the remedy available to the accused is not by way of an application for discharge. The party concerned may take recourse to the other remedy available under the law. In view of this, I am satisfied that the learned Additional Sessions Judge has failed to consider the basic provisions of Chapters XXI and XX of the Cr.PC. The learned Additional Sessions Judge has exceeded his jurisdiction. The learned Additional Sessions Judge has exercised the power which has not been vested with him under the law.

11] It needs to be stated at this stage that the learned Magistrate, at the stage of issuance of process, has recorded a categorical finding that there was a breach of the protection order. Similarly, while rejecting the discharge application, the learned Magistrate has recorded a finding that there was a breach of the protection order. The breach of the protection order constitutes an offence punishable under Section 31 of the DV Act. The learned Magistrate took cognizance of the said offence under Section 32 of the DV Act. In my view, therefore, the order passed by the learned Additional Sessions Judge cannot be sustained in law. The Revisional Court has to examine the illegality, perversity or

irregularity in the order, which has been subjected to the revisional jurisdiction.

12] Perusal of the order passed by the learned Magistrate would show that there was neither illegality nor perversity in the order passed by the learned Magistrate. The order passed by the learned Additional Sessions Judge dated 28th December, 2023, is required to be set aside. Hence, the following order:

ORDER

- i] The petition is **allowed**.
- ii] The order dated 28th December, 2023, passed by the learned Additional Sessions Judge, Akola, in Criminal Revision No.68/2023, is set aside.
- iii] The order dated 23.02.2023, passed by the learned Judicial Magistrate First Class, Akola, below Exh.21 in SCC No.3878/2022, rejecting the discharge application, is restored.
- iv) Rule is made absolute in the above terms. No order as to costs.

(G. A. SANAP, J.)