



CRR-55-2024

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226 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-55-2024

Date of decision: 09.08.2024

AMARPAL SINGH

...PETITIONER

V/S

AMARDEEP KAUR

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mohinder Kumar, Advocate
for the petitioner.

Ms. Garima Chaudhary, Advocate for
Mr. Amit Arora, Advocate for the respondent.

HARPREET SINGH BRAR, J. (ORAL)

1. Present petition has been filed under Section 482 Cr.P.C. challenging the order/judgment dated 22.11.2023 passed by learned Additional Sessions Judge, Tarn Taran, in Criminal Appeal No.63 of 2022 dated 20.09.2022 titled as 'Amarpal Singh vs. Amardeep Kaur' filed by the petitioner-husband whereby, order dated 22.08.2022 passed by learned Sub Divisional Judicial Magistrate, Khadur Sahib in complaint bearing No.COMA-9 of 2017 titled as 'Amardeep Kaur vs. Amarpal Singh, filed by respondent-wife under the provisions of Protection of Women from Domestic Violence Act, 2005 has been upheld.

2. Ms. Garima Chaudhary, Advocate for Mr. Amit Arora, Advocate has put in appearance on behalf of the respondent and filed his *vakalatnama* which is taken on record. Registry is directed to tag the same at the appropriate place.



3. In view of the settled law pronounced by the Hon'ble Supreme Court in ***Kunappareddy Vs. Kunappareddy Swarna Kumari (2016) 11 SCC 774***, Full Bench of Madras High Court in ***Arul Daniel and others Vs. Suganya, 2022 SCC Online Mad 5435*** and by the Co-ordinate Bench of this Court in ***Jaspal Kaur alias Pinki and others Vs. State of Punjab and others*** in ***CRM-M-19553-2023*** decided on 24.04.2023, the provisions of the Code of Criminal Procedure, 1973 cannot be invoked to challenge proceedings emerging out of Protection of Women against Domestic Violence, 2005.

4. A Full Bench of Madras High Court in ***Arul Daniel and others Vs. Suganya, 2022 SCC Online Mad 5435***, after analyzing various judicial precedents including judgments rendered by the Hon'ble Supreme Court in ***Kamatchi's*** case (*supra*) and ***Kunapareddy's*** case (*supra*), answered the reference to the following effect:

“(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 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.*

(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.”*



5. Further, when proceedings under Section 12 of the DV Act have been categorically declared civil in nature, it would be absurd to hold Section 29 of the DV Act cannot be said to be criminal in nature. A Co-ordinate Bench of this Court in **Jaspal Kaur**'s case (*supra*), culled out the following principles:

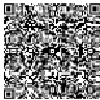
“(i) Proceedings under Section 12 of the Act are civil in nature. Notice issued under Section 13 of the Act is not a summons under Section 61 of Cr.P.C. The principle laid down by Hon'ble Supreme Court in Adalat Prasad (supra) is not applicable to notice issued under Section 13 of DV Act.

(ii) Petition under Section 482 Cr.P.C is not maintainable against petition under Section 12 or notice issue under Section 13 of DV Act.

(iii) An order passed by Sessions Court under Section 29 is continuation of civil proceedings, thus, revision under Section 397 or petition under Section 482 assailing order passed by Sessions Court under Section 29 is not maintainable.

(iv) Magistrate is supposed to apply his mind at the time of issuing notice under Section 13 of DV Act and in case an application is moved by respondent on the ground of maintainability or jurisdiction or for deletion from the array of respondents, Magistrate is supposed to adjudicate the application.”

6. Furthermore, while distinguishing the ratio of law laid down by a Full Bench, having co-equal strength, of the Bombay High Court in **Nandkishor Pralhad Vyawahare vs. Mangla w/o Pratap Bansar 2018 (3) Mh.L.J. 913**), the Full Bench of the Madras High Court in **Arun Daniel(supra)**, after due consideration, disagreed with the ratio of law laid down in the same. Moreover, the Special Leave Petition (SLP (Crl.) No. 7533/2024) against the judgment of a Co-ordinate bench of this Court in **Harwinder Singh vs. State of Punjab and another CRM-M-16544-2024** decided on 30.04.2024, wherein a similar view has been taken, was declined by



the Hon’ble Supreme Court vide order dated 09.07.2024, while keeping the question of law open. As such, this Court would like to respectfully disagree with the view taken by the Bombay High Court in *Dhananjay Mohan Zombade(supra)*. Accordingly, in view of *Kunnapareddy(supra)*, *Kamatchi(supra)* and *Arul Daniel(supra)*, it is well settled that the proceedings under Section 23 and 29 of the DV Act are civil in nature and therefore, the provisions of Cr.P.C. would not be applicable to them.

7. In view of the above, learned counsel for the petitioners wishes to withdraw the present petition and seeks liberty to invoke alternative appropriate remedy on the same cause of action in accordance with law for redressal of grievances raised in the present petition.

8. Dismissed as withdrawn with liberty as prayed for.

August 09, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No