



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-15244-2024

Reserved on: 22nd May, 2024

Date of Pronouncement: 2nd July, 2024

Ranjna and others

...Petitioners

Versus

Priya @ Gitanjali

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Ravi Gakhar, 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 complaint bearing No. COMA-146-2022 dated 22.07.2022 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (For short "DV Act") pending before Ld. Judicial Magistrate First Class, Yamuna Nagar (Annexure P-1) and all the consequential proceedings arising out of it.

2. The aforementioned criminal complaint has been filed by the present Respondent no.1/Complainant against her husband (Respondent no.2/Non-Contesting) and his family members (i.e. the petitioners who are sisters, brothers of respondent No.2 and their respective spouses). Brief facts of the case as enumerated in the complaint are that the marriage between complainant and Rohit Bhola was solemnized on 12.10.2016 according to the Hindu Rites and ceremonies in Yamuna Nagar. Although the couple had consummated the marriage but no child was born out of their wedlock. From



the very inception, the petitioners had started harassing, humiliating and gave beatings to the complainant for their demands. The petitioners started abusing and taunting the complainant by saying that her parents had lowered their image in the society failing to keep up with their standards and not fulfilling the qualitative and quantitative dowry expectations. The complainant in her complaint had further specifically alleged that her husband was habitual drunkard and used to give beatings to her and taunted her by referring her as 'Baanjh' under the influence of alcohol. The petitioners used to keep her hungry and failed to provide for her household expenses as well. In the month of March, 2020 she was shunted out of her matrimonial house by the petitioners for failing to fulfill their dowry demands and feeling constrained, she told the whole facts to her parental family who even tried to prevail good sense upon the petitioners and hoped that with efflux of time the act and conduct of the petitioners might be changed but to no avail thereby compelling her to approach the Court of learned Judicial Magistrate First Class, Yamuna Nagar by way of filing the impugned complaint bearing No. COMA-146-2022 dated 22.07.2022 under Section 12 of the D.V. Act praying for the following reliefs as mentioned there-under:-

- i.) Protection order under Section 18
- ii.) Residence order under Section 19
- iii.) Monetary relief under Section 20
- iv.) Compensation under Section 22



4. Learned counsel for the petitioners strenuously argued that the petitioners were family members of the Husband (respondent no.2/Non-Contesting) and were living in their respective matrimonial houses and do not fall within the definition of 'domestic relationship' as defined under the D.V. Act in order to attract the provisions of the D.V. Act. and they had been unnecessarily dragged into litigation by the respondent no.1. This petition had been filed on false and frivolous grounds to harass the petitioners and, therefore, it was argued that the proceedings initiated against the petitioners in pursuance of the complaint so filed as well as this petition were liable to be quashed. With regard to question of maintainability of this petition, it was argued that the same was very much maintainable. To fortify his argument, learned counsel for the petitioners has placed reliance upon authorities cited as '*Nandkishor Prahlad Vyawahare v. Sau Mangala*' 2018(2) RCR (Criminal) 907 and '*Dhananjay Mohan Zombade v. Prachi Dhananjay Zombade*' (2023) 3 Bom CR(Cri)954.

4. Learned counsel for the petitioners was heard at considerable length and the record has been carefully perused.

5. The preliminary 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 petitioner and whether 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 are



predominantly of civil nature. Infact the very purpose of enacting the DV Act was to provide 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 them from 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.

5. 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) 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 to 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's case (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.”



6. In view of the ratio of law as laid down in the above cited judgments as well as judgments passed by this court in case titled as ‘*Nitash Gupta and others v. Anshita Vig* 2024 SCC OnLine P&H 2524’ as well as in CRM-M-57760-2023 titled as ‘*Suman Choudhary and another v. Samir Vasan and others*’ vide order dated 13.12.2023, it clearly emerges out 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 of the act. 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 stands dismissed.

7. However keeping in view the interest of justice, liberty is still granted to the petitioners to move appropriate application before the concerned Magistrate at the appropriate stage who shall pass order, if such application is moved by either of the petitioner(s), for determining the question as to deletion of his/her name of array of respondents in the impugned complaint as well as maintainability of the petition qua him/her.

[MANISHA BATRA]
JUDGE

2nd July, 2024
Parveen Sharma

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