

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-24307-2023 (O&M)
DATE OF DECISION : 12.03.2024
(Reserved on 07.03.2024)

SUMAN ... PETITIONER

V/S

ISHWANTI AND ANOTHER ... RESPONDENTS

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Sahaj Punj, Advocate for
Mr. Tribhawan Singla, Advocate for petitioner.

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HARPREET KAUR JEEWAN, J. (ORAL)

1. The present petition under Section 482 Cr.P.C. has been filed for setting aside the order dated 13.03.2023 passed by the learned Sub Divisional Judicial Magistrate, Kharkhoda, District Sonapat dismissing the execution application filed by the petitioner.
2. As per the factual matrix, petitioner filed an application under Section 12 of Protection of Women from Domestic Violence Act, 2005 against her husband, her mother-in-law, father-in-law and brother-in-law. The respondent No.1 is the mother-in-law and respondent No.2 is the brother-in-law of the petitioner. The said petition was allowed vide order dated 24.07.2015 (Annexure P-1) by learned Judicial Magistrate First Class, Kharkhoda, Sonapat granting maintenance @ Rs. 5,000/- p.m. to the petitioner-wife along with Rs. 2,000/- p.m. as rent and also compensation to the tune of Rs. 20,000/- p.m. The said order (Annexure P-1) was challenged

by the respondents as well as by father-in-law (now deceased) of the

petitioner by way of filing an appeal which was disposed of vide order dated 29.01.2018 (Annexure P-3) by the learned Addl. Sessions Judge, Sonapat whereby order dated 24.07.2015 (Annexure P-1) was modified to the extent that petitioner's claim only subsist against her father-in-law. The relevant portion of the order reads as under:

"12. Thus, in view of the above provision of law, it is established that a wife is entitled to maintenance only against her husband and after the death of her husband, she is entitled to get arrears of maintenance from her father-in-law subject to that she would be able to show that it was a joint Hindu family property or ancestral property in which her husband had right.

13. As such, in view of the above discussion, the present petition qua the respondents No.3 - Ishwanti (mother-in-law) and respondent No.4 Bijender Singh (brother-in-law) is allowed, as they have no liability to pay any maintenance etc. to the applicant, and further impugned order dated 24.07.2015 is modified to the extent that award of maintenance etc. as awarded by the learned lower Court would be enforced against respondent No.2 - Dharam Singh (father-in-law) only to the extent of recovery of the maintenance etc. as awarded by the learned trial Court subject to applicant – Suman is able to prove by adducing evidence/documents that it was a joint Hindu Family property or ancestral property, in which her husband – respondent No.1 (since expired) had right."

3. Petitioner-wife filed execution petition on 19.09.2015 and in the meantime, father-in-law of the petitioner died on 08.06.2019. By passing the impugned order dated 13.03.2023, the aforesaid execution petition was dismissed by Sub-Divisional Judicial Magistrate, Kharkhoda by observing that to prove ancestral nature of the property, the decree-holder of the petitioner had not led any evidence except for report of the Tehsildar Safidon dated 07.08.2018. It was further observed that the onus was upon the decree-holder/petitioner to prove the ancestral nature of the property but the revenue record produced by the petitioner/decreed-holder does not show that the suit land was inherited by Dharam Singh, father-in-

law of the petitioner from his father, grand-father, great grand-father. It was held that the petitioner cannot claim any maintenance from her mother-in-law, brother-in-law as per the order passed by the appellate Court dated 29.01.2018 and she has failed to prove that the property was ancestral property in the hands of her father-in-law. As such, the execution petition filed by the petitioner was dismissed by making the following observations:-

“The daughter in law can claim maintenance from her father-in-law provided that he has inherited some estate of her husband. The petitioner has failed to disclose any estate of her husband having devolved upon respondent No.2, Dharam Singh. Not only this, the father-in-law has already expired. Now, decree-holder/petitioner cannot claim any maintenance from her mother-in-law and brother-in-law as they have already been absolved from liability to pay any maintenance etc. to the petitioner/decreed holder by Ld. Appellate Court vide order dated 29.01.2018.

Section 22 of Domestic Violence Act, 2005 provides for maintenance of descendants of deceased by heirs of deceased but this is subject to the condition that they having inherited the estate from the deceased. The petitioner failed to show any estate, being inherited even by her father-in-law or the remaining respondents from which any maintenance can be claimed. Moreover, whether she has any right in the property of her deceased father-in-law, cannot be decided in the present execution petition for which she is always at liberty to file a civil suit to get her rights decided by the competent court. Since, the petitioner has failed to prove any ancestral property, being owned by her father-in-law in which her husband had right, therefore, the present execution petition cannot be continued as respondent no. 2 Dharam Singh has already expired and her son i.e. the present applicant, is not liable to pay any maintenance to her. In view of above discussion, the application stands allowed and the present execution petition is dismissed as being not executable. The property, if any of the judgment-debtor under attachment, be released from attachment.”

4. There is no such order passed by the Magistrate or by the Addl.

Sessions Judge under the Protection of Women from Domestic Violence

Act, 2012 which is criminal in nature, which is under challenge by way of the present petition under Section 482 Cr.P.C.

5. In view of the ratio of decision of this Court vide judgment dated 30.11.2023 passed in CRM-M-58023-2023 in **Gautam Singal Vs. Anuj Singal**, the present petition under Section 482 Cr.P.C. is not maintainable. Following observations were made by this Court in **Gautam Singal's case** (supra):-

“19. In view of the aforesaid discussion, the following conclusions are made:-

*(i) That Hon'ble the Apex Court in **Kunapareddy @ Nookala Shanka Balaji's** case (supra) has held that the relief granted under Sections 12 to 23 are of civil nature, however, whenever there is a breach of such an order passed by the Magistrate only then the breach is punishable as an offence under Section 31 of the DV Act.*

*(ii) Hon'ble the Apex Court in **Kamatchi's case** (supra) has held that application under Section 12 of the DV Act cannot be equated with the complaint or initiation of prosecution.*

*(iii) The Hon'ble Full Bench of Madras High Court in **Arul Daniel's** (supra) held that proceeding under Chapter IV of the D.V. Act cannot be challenged by invoking the provisions of Section 482 Cr.P.C. The Hon'ble Full Bench of Madras High Court gave the said observations by placing reliance upon the observations made by Hon'ble the Apex Court in **Kunapareddy @ Nookala Shanka Balaji's and Kamatchi's cases** (supra) and while distinguishing the previous observations made on 16.02.2023 by Hon'ble the Full Bench of the Bombay High Court in **Dhananjay Mohan Zombade's** case (supra).*

(iv) The Order passed under Section 23 and Section 29 of the DV Act falls within the proceedings under Chapter IV of the D.V. Act and the relief granted to the respondents against the petitioners is civil in nature.

(v) The impugned order does not fall within Section 31 of the DV Act as it is not a penalty for breach of any order passed by the Magistrate under Chapter IV or breach of any interim protection order granted by the Magistrate under the said Chapter.

20. Consequent to the above discussion, it is held that the impugned orders passed under section 23 and 29 of the DV Act, which falls within Chapter IV of the DV Act are not criminal in nature and, as such, the petition under Section 482 of the Code is not maintainable, since this question is no longer res integra in view of the observations made by Hon'ble the Apex Court in **Kunapareddy @ Nookala Shanka Balaji's and Kamatchi's cases** (supra) and decision of Hon'ble the Full Bench of Madras High Court in **Arul Daniel's** (supra).

The question for determination is accordingly answered.

6. In view of the facts and circumstances of the present case and in view of the ratio of decision in **Gautam Singal's** case, the petition stands dismissed being not maintainable under Section 482 Cr.P.C. with the liberty to the petitioner to avail remedy as per law. However, no observations have been made on merits of the petition.

7. Pending miscellaneous application (s), if any, shall also stand disposed of.

12.03.2024

Janki

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No