



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

119

CRM-M-24511-2024

Date of decision: 16th May, 2024

Shivangini Bhardwaj

...Petitioner

Versus

Rajwant Kaur

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Amandeep Bhardwaj, Advocate for the petitioners.

MANISHA BATRA, J (Oral):-

The present petition under Section 482 Cr.P.C has been filed by the petitioners for quashing of the criminal complaint bearing No. COMA/16/2024 dated 16.01.2024 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (For short "DV Act") alongwith order dated 18.01.2024 whereby the notice of the aforesaid complaint had been issued to the petitioner (Annexures P-4 and P-5 respectively).

2. The aforementioned criminal complaint has been filed by the present Respondent-Complainant who is the mother-in-law of the petitioner. Brief facts of the case as enumerated in the complaint are that the marriage between Complainant's son and the petitioner was solemnized on 08.10.2021 according to the Sikh Rites and ceremonies in SAS Nagar, Punjab and according to Hindu rites and ceremonies in Chandigarh and thereafter they went to the matrimonial home. However as time passed, the petitioner allegedly started harassing and torturing the complainant and her



son on different pretexts. At the time of the marriage, the complainant-respondent had gifted several gold and diamond jewellery ornaments to the petitioner as a way of welcoming her into the family as newly wedded bride but the petitioner spoke ill of her and on several occasions taunted her sarcastically expressing her dislike for the gifts and calling them out as cheap. The petitioner did not bother to greet and communicate with the guests, relatives and neighbours who came to meet the newly wedded couple. The petitioner had met with an accident a few days prior to the marriage. After the marriage, doctor had advised the petitioner to put on plaster and to take rest for few days, where after the complainant started taking care of the petitioner and did not force her to do any household chores. During this period, the petitioner started annoying the complainant by making unnecessary demands and unreasonable requests and kept herself busy on phone calls with her friends and often mocked as well as insulted the complainant while being on those calls causing immense insult to the dignity of the complainant. The petitioner further even threatened to make the life of the complainant and her son a living hell by warning them to lodge a false case against them if they tried to intervene in her life or to put any restrictions on her. On one specific instance, while talking to her friends on a video call, the petitioner had unscrupulously mocked the complainant and called her with filthy names causing embarrassment and mental agony to her. The complainant had narrated the incident to her son and when he talked to the petitioner about the same, she blatantly denied about the incident. However on the next day in the morning, the petitioner ruthlessly gave



beatings to the respondent and threatened her with filing falsely concocted cases under Section 498-A as well as 377 of IPC. The petitioner had filed a petition under Section 13 of Hindu Marriage Act, 1955 which had been dismissed for non prosecution. The ties between the parties had severed to such an extent that there was no scope of reconciliation and it was clearly evident that the wedlock had completely been broken since there was no scope of them residing together. The petitioner thereafter had left the matrimonial home in first week of November, 2021 with all her belongings and Stridhan.

3. In view of the aforementioned factual matrix and the emotional , physical as well as mental distress caused to the complainant, she had thus approached the court of Ld. Chief Judicial Magistrate, Dera Bass, District S.A.S. Nagar (Punjab) being a resident of Zirakpur, Punjab by way of the impugned complaint bearing No. COMA/16/2024 dated 16.01.2024 under Section 12 of the D.V. Act praying for the following reliefs mentioned there-under as follows:

- a.) taking cognizance of the complaint/Domestic Incident Report and passing necessary order
- b.) passing protection order under section 18
- c.) passing residence order under section 19
- d.) directing the petitioner to grant compensation or damages under section 22
- e.) passing any interim orders as the court deem just and proper.

4. Since the petitioner has been issued notice of the impugned



complaint vide order dated 18.01.2024 passed by learned Magistrate, therefore aggrieved from the same, this petition has been filed.

5. I have heard learned counsel for the petitioner at considerable length and perused the record carefully.

6. The first and the foremost 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.

7. 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) 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 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 under Section 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.”

8. 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 or notice issued under Section 13 of the DV Act qua the petitioner. The respondent has filed application/complaint under Section 12 of DV Act against the petitioner and the Magistrate has issued notice to her. 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 petition stands dismissed.

9. However, it is observed that since all the proceedings

emanating out of the complaint filed by the respondent had been challenged before this Court, therefore keeping in view the interest of justice, liberty is granted to the petitioner to avail alternative efficacious remedies qua the same available to her as per law.

[MANISHA BATRA]
JUDGE

16th May, 2024
Parveen Sharma

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