220 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-821-2018 (O&M)
Date of decision: 03.04.2024

ANITA MEHTA

...PETITIONER

V/S

YUDHISHTHAR KUMAR @ SUNIL KUMAR AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Anil Kumar Ahluwalia, Advocate
for the petitioner.

Petition already stands dismissed qua petitioner No. 1.

Mr. Sudhir Makkar, Advocate and
Mr. Bhumij Makkar, Advocate
for the respondents No. 2, 3 and 4.

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HARPREET SINGH BRAR J. (ORAL)

1. Present revision petition has been filed challenging the order dated 28.07.2016 passed by learned Judicial Magistrate Ist Class, Hisar in a petition filed under Section 12 of the Protection of Women from Domestic Violence Act as well as the judgment rendered by learned Additional Sessions Judge, Hisar against the aforementioned judgment.

2. Brief facts leading to the present case are that the present petition was filed by the appellant-petitioner against the respondents under Section 12 of the Protection of Women from Domestic Violence Act, 2005 alleging therein that her marriage was solemnized with respondent No.1 Yudhishthar Kumar @ Sunil Kumar on 8.10.1989 at Hisar as per Hindu rites and ceremonies. The marriage was consummated and a male child namely Manik Mehta was born out of this wedlock but respondent No.1 is neither maintaining nor taking care of him, as such, the entire maintenance of the son are being borne by the petitioner. The parents of the petitioner spent a huge amount in the marriage and gave sufficient dowry articles and gifts as per wish

AJAY GOSWAMI
2024.04.04 09:36
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of respondents, but after few days of marriage, the respondents started cursing, taunting the petitioner on petty matters and respondent No.1 being an arrogant and short tampered person used to pick up quarrels with the petitioner on trivial matters. The respondents also started to give severe beatings to the petitioner. Consequently, she was turned out of her matrimonial home and forced to reside with her parents at Hisar. However, with the intervention of relatives and respectables of both the sides, the petitioner was taken back to her matrimonial home by the respondents but after a few months, they again started quarreling with her without any cogent and plausible reason and respondent No.1 did not give her money to meet out day to day domestic expenses. The petitioner was somehow bearing the atrocious behaviour of the respondent- husband with the hope that good senses may prevall upon the respondents. But the behaviour of the respondent did not mend and the petitioner was being turned out by the respondents from her matrimonial home almost every year with the threat not to come back again. In this process, the respondents made the life of the petitioner and her minor son hell as the studies of her son were completely disturbed because when the petitioner was being turned out from her matrimonial home, her minor son had also accompanied her. In these circumstances, the petitioner had spent about 18-19 years of her married life with the respondents. Although, she was turned out of her matrimonial home several times. Many panchayats were convened by the parents of the petitioner to settle her but of no avail. Ultimately, in the month of June, 2010 the petitioner was finally turned out of her matrimonial home just in three clothes by the respondents by retaining her entire *Istri Dhan* and dowry articles etc. As such, the petitioner was forced to live with her parents alongwith her minor son at Hisar and leading a miserable life at the mercy of her parents. Respondent No 1 Sunil @ Yudhishthar is in habit of spending

AJAY GOSWAMI
2024.04.04 09:36
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money lavishly being a member of Club at Sirsa where the membership fee is Rs.1.00 lac and he also gambles and plays cards. As and when he used to loose the game, he used to demand money from the petitioner to be brought from her parental home. Respondents Ashok and his wife and son are also inimical to the petitioner and they have threatened the petitioner that they would grab everything from Sunil @ Yudhishthar as they have evil eye on the ancestral house at Sirsa where the petitioner was residing with her son Manik Mehta. The petitioner has no source of income to maintain herself as well as her son whereas, respondent No.1 is a big landlord having more than 25 acres of agricultural land and his income is not less than Rs.60,000/- per month from all sources. Since the petitioner had been deserted by the respondents, she was residing at Hisar while her son Manik Mehta was residing with his Bua at House No.518, Nohria Bazar, Shni Mandir Wali Gali, Sirsa and now the Bua of Manik Mehta had also left that house, which is actually the ancestral property in which Manok Mehta has pre- existing right but the respondents oust Manik Mehta from that house. Therefore, the petitioner sought maintenance allowance of Rs.15,000/- per month and protection from domestic violence. It was also prayed that respondents be also restrained from alienating and selling the assets i.e. agricultural land and house in question and to give accommodation in the shared house to the petitioner and her son.

3. Having heard the learned counsel for the parties and after perusing the record with their able assistance, this Court is of the considered view that a petition under Section 482 of the Cr.P.C. is not maintainable qua proceedings arising out of Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter 'the Act') as concluded by a Co-ordinate bench in **Jaspal Kaur alias Pinki and others v. State of Punjab and others** in **CRM-M-19553-2023** decided on 24.04.2023, after dealing with the issue *in extenso.*

AJAY GOSWAMI
2024.04.04 09:36
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4. A two Judge Bench of Hon'ble Supreme Court in **Kamatchi v. Lakshmi Narayanan 2022 SCC Online SC 446**, speaking through Justice U. U. Lalit, has opined that the ratio of law laid down in **Adalat Prasad v. Rooplal Jindal & Others (2004) 7 SCC 338** would not be applicable to proceedings instituted under Section 12 read with Section 13 of the Act. The relevant observations are reproduced as under:

> *"29. It is thus clear that the High Court wrongly equated filing of an application under Section 12 of the Act to lodging of a complaint or initiation of prosecution. In our considered view, the High Court was in error in observing that the application under Section 12 of the Act ought to have been filed within a period of one year of the alleged acts of domestic violence.*
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> *30. It is, however, true that as noted by the Protection Officer in his Domestic Inspection Report dated 2.08.2018, there appears to be a period of almost 10 years after 16.09.2008, when nothing was alleged by the appellant against the husband. But that is a matter which will certainly be considered by the Magistrate after response is received from the husband and the rival contentions are considered. That is an exercise which has to be undertaken by the Magistrate after considering all the factual aspects presented before him, including whether the allegations constitute a continuing wrong.*
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> *31. Lastly, we deal with the submission based on the decision in Adalat Prasad . The ratio in that case applies when a Magistrate takes cognizance of an offence and issues process, in which event instead of going back to the Magistrate, the remedy lies in filing petition under Section 482 of the Code. The scope of notice under Section 12 of the Act is to call for a response from the respondent in terms of the Statute so that after considering rival submissions, appropriate order can be issued. Thus, the matter stands on a different footing and the dictum in Adalat Prasad would not get attracted at a stage when a notice is issued under Section 12 of the Act."*

5. A perusal of the aforesaid observations makes it evident that scope of notice under Section 12 read with Section 13 of the Act is to elicit a reply from the respondent in order to pass an appropriate order. Thus, application under Section 12 of the Act cannot be treated as a complaint for initiation of prosecution. Similarly, a notice under Section 13 of the Act is not akin to taking cognizance of an offence or issuance of process by the jurisdictional Magistrate. Further, a two Judge Bench of Hon'ble Supreme Court in

AJAY GOSWAMI
2024.04.04 09:36
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Kunappareddy Vs. Kunappareddy Swarna Kumari (2016) 11 SCC 774 has authoritatively held that proceedings under Section 12 of the Act are civil in nature and opined as follows:

> *"11. We have already mentioned the prayers which were made by respondent no.1 in the original petition and prayer 'A' thereof relates to Section 9. However, in prayer 'B', the respondent no.1 also sought relief of grant of monthly maintenance to her as well as her children. This prayer falls within the ambit of Section 20 of the DV Act. In fact, prayer 'A" is covered by Section 18 which empowers the Magistrate to grant such a protection which is claimed by the respondent no.1. Therefore, the petition is essentially under Sections 18 and 20 of the DV Act, though in the heading these provisions are not mentioned. However, that may not make any difference and, therefore, no issue was raised by the appellant on this count. In respect of the petition filed under Sections 18 and 20 of the DV Act, the proceedings are to be governed by the Code, as provided under Section 28 of the DV Act. At the same time, it cannot be disputed that these proceedings are predominantly of civil nature.*
>
> *12. In fact, the very purpose of enacting the DV Act was to provide for a remedy which is an amalgamation of civil rights of the complainant i.e aggrieved person. Intention was to protect women against violence of any kind, especially that occurring within the family as the civil law does not address this phenomenon in its entirety. It is treated as an offence under Section 498A of the Indian Penal Code. The purpose of enacting the law was to provide a remedy in the civil law for the protection of women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. It is for this reason, that the Scheme of the Act provides 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."*

6. Since there was an apparent cleavage in the opinion between different benches with regard to nature of proceedings under Section 12 of the Act and jurisdiction of High Court under Section 482 Cr.P.C vis a vis Article 227 of the Constitution, the matter was referred to a Full Bench of Madras High Court in **Arul Daniel and others Vs. Suganya 2022 SCC Online Mad 5435**. After analysing various judicial precedents including judgments rendered by the Hon'ble Supreme Court in **Kamatchi Vs. Lakshmi Narayanan(supra)** and **Kunapareddy Vs. Kunapareddy Swarna Kumari and Anr. (2016) 11**

AJAY GOSWAMI
2024.04.04 09:36
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SCC 774, the Full Bench 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.*
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> *(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.*
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> *(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.*
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> *(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.*
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> *(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*

AJAY GOSWAMI
2024.04.04 09:36
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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."

7. In view of the above-mentioned judgments, a Co-ordinate bench of this Court in **Jaspal Kaur(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."

8. Learned counsel for the petitioner, on being confronted with settled law on the issue at hand, could not controvert that the present petition under Section 401 Cr.P.C. challenging the proceedings emanating from the provisions of Section 12 of the Act is not maintainable. Accordingly, the present petition is dismissed. However, the petitioner would be at liberty to invoke appropriate alternative remedy on the same cause of action.

(HARPREET SINGH BRAR)
JUDGE

April 03, 2024
Ajay Goswami

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

AJAY GOSWAMI
2024.04.04 09:36
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