

CRM-M-37352-2021 (O&M)

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220 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-37352-2021 (O&M)

Date of decision: 21.05.2024

CHETAN SHARMA

...PETITIONER

V/S

CHARU SHARMA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

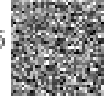
Present: Mr. Atul Lakhanpal, Senior Advocate with
Ms. Caral Aggarwal, Advocate
for the petitioner.

Mr. Vishal Gupta, Advocate
for the respondent.

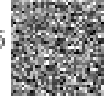
HARPREET SINGH BRAR J. (ORAL)

1. Present petition has been filed under Section 482 of Cr.P.C. seeking quashing of the complaint No. 85/2021 dated 02.08.2021 titled as ***Charu Sharma Vs. Chetan Sharma*** under Sections 12, 17, 18, 19, 20 and 21 of Protection of Women from Domestic Violence Act, 2005 (Annexure P-4) filed by the respondent in the Court of learned Judicial Magistrate Ist Class, Dera Bassi, District SAS Nagar (Mohali) and further proceedings taken thereon and order dated 02.08.2021 (Annexure P-5) passed by learned Judicial Magistrate Ist Class, Dera Bassi.

2. That the petitioner is serving in merchant Navy as Chief Officer and has to be on the high Seas for a major part of a year. The father of the petitioner-Sh. Naresh Kumar was serving in Punjab Power Corporation Ltd. and has now retired from service. The mother of the petitioner-Smt. Santosh Sharma was a housewife, Shilpa Sharma-sister of the petitioner, was MBA, B.Ed. and was serving in BBK, DAV College, Lawrance Road, Amritsar. The

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marriage of the petitioner was performed with Charu Sharma d/o Raj Kumar Sharma, resident of 14-A Bless-Homes, Peer Muchhalla, Zirakpur on 11.11.2016 and a son was born out of this wedlock, who is 2 years 5 months old. The marriage of the petitioner was love marriage and they had love affair for a period of 4 years before they were married. The house in which the petitioner along with his family was residing, was built by the lifetime saving of his father, but the name of the petitioner was added in order to obtain loan as the father of the petitioner was retiring. Charu Sharma-wife of the petitioner was never comfortable in her matrimonial home and was always at loggerheads with the family of the petitioner and humiliated them on the slightest pretext and her became cruel and unbearable for the family of the petitioner by each passing day. She humiliated the family of the petitioner by taunting that they are staying as beggar in the house of her husband in which they have no right and should leave the house as soon as possible which the family of the petitioner could not afford. On the fateful day of 26.05.2019, at about 4.00 PM, in the afternoon, Charu Sharma quarreled with the mother and sister of the petitioner in a very abusive manner and even physically assaulted them and told them that shameful people like you should die by consuming Sulphas, which she had brought and is lying in her room and only then she will get peace. That the petitioner who was at sea made video call to Charu Sharma-his wife to behave and to cool down and he is coming soon and will settle the issue, but she did not stop and continued fighting with the mother and sister of the petitioner. The mother and sister of the petitioner were left with no choice but to end their lives on account of continuous torture, humiliation and instigation by Charu Sharma to end their lives to make her live peacefully and

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the incident of mother and sister of the petitioner having consumed poison came to the notice of the father of the petitioner at about 9.00 p.m. when Charu Sharma informed the father of the petitioner that they are not at home. Father of the petitioner and his relatives immediately took both mother and sister of the petitioner to hospital where mother of the petitioner was declared brought dead and treatment was carried out to save the sister of the petitioner. Interestingly, the parents of Charu Sharma from Zirakpur and her maternal uncle Dinesh Kumar Kaushal from Baddi (H.P.), who is an advocate at Baddi, Nalagarh (H.P.), on whose name Charu Sharma used to threat the family of the petitioner of false implication in criminal cases, reached the house of the petitioner at 2.00 a.m. along with other relative Puneet Kaushal from Nalagarh who is having political links and the police was also present in the house of the petitioner at that time, which is recorded in CCTV cameras and in a pre-determined fashion to save Charu Sharma, proceedings under section 174 Cr.P.C. were carried out when mother of the petitioner had already died and the sister of the petitioner was gasping for breath. Signature of father of the petitioner were obtained while recording the statement that action will be taken as and when his son i.e. the petitioner will reach at home. Since the petitioner was away and the father of the petitioner was absolutely crest fallen and did not know what to do and became occupied in the last rites. Unfortunately after carrying out the proceedings u/s 174 Cr.P.C., the police did not approach the father of the petitioner at all and unfortunately, the police did not initiate any enquiry or investigation into the reason of suicide by the mother and sister of the petitioner, which they were duty bound too, they did not care to ascertain as to what has led to suicide by the two ladies. Right from the day, the petitioner



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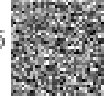
came home, he started to approach the local police for initiating action. Eventually when no police personnel reached to record his statement regarding the occurrence, the petitioner submitted a written representation to the Commissioner of Police on 18.06.2019.

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*.

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.

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

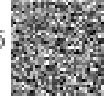


before him, including whether the allegations constitute a continuing wrong.

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, the 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 **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 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.

(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 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 (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.”

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 482 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.
9. However the petitioner would be at liberty to invoke appropriate remedy on the same cause of action in accordance with law for redressal of grievances raised in the present petition.

May 21, 2024

Ajay Goswami

(HARPREET SINGH BRAR)

JUDGE

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