

CRM-M-32741-2023
Date of decision: 04.04.2024

....Petitioners

...Respondent

Present: Mr. Abhijeet Sharma, Advocate
for the petitioner.

Mr. Hemen Aggarwal, Advocate
for the respondent.

1. The present petition has been filed under Section 407 read with Section 482 Cr.P.C. seeking transfer of petition under Section 12 of the Protection of Women from Domestic Violence Act titled as 'Sudesh Vs. Bhanwsar Singh and another' bearing No. DV ACT/54/2019 (Annexure P-1), presently pending in the Court of learned Civil Judge (SD)-cum-Additional Chief Judicial Magistrate, Jhajjar, to the competent Court situated at Sonipat as petitioner No.1 is suffering from medical issue of Prolapsed Intervertebral Disc (Annexure P-2), whereas, petitioner No.2 is a 75 years old aged lady and also both the parties are residing in the same house at District Sonipat, Haryana.

2. The brief facts of the case are that the marriage of petitioner No.1 and the respondent was solemnized on 08.06.2004 according to Hindu Rites and ceremonies at Village Majra, Tehsil Beri, District Jhajjar and thereafter, they were cohabiting together as husband and wife and out of this wedlock, one

female child was born. The marriage between petitioner No.1 and the respondent was conducted in a simple manner with no extravagant expenses given that it was the second marriage for both parties. It is further alleged that the respondent initiated quarrels, humiliation, and insults towards petitioner No.1 and his family members from the outset of the marriage, often over petty matters, persistently disrupting the peace and harmony within the family. Despite petitioner No.1's efforts to avoid conflict, the respondent remained adamant and frequently resorting to physical altercations. Furthermore, the respondent occasionally lost temper at night, creating disturbances with loud noises and verbally abusing the petitioners. Even after knowing that the respondent has rude behaviour, petitioner No.1 always tried his best to adjust with her. At present, both the parties reside together under one roof in District Sonipat. Petitioner No.1 resides on one floor with his son from a previous marriage, while the respondent resides on another floor with her daughter from her current marriage with petitioner No.1.

3. It is further alleged that petitioner No.1 is unable to attend the proceedings regularly on the dates scheduled before the learned Court of Civil Judge (SD)-cum-Additional Chief Judicial Magistrate, Jhajjar for the case filed by the respondent against the petitioners as petitioner No.1 is afflicted with a prolapsed intervertebral disc and has been advised to refrain from prolonged travel and extended periods of sitting. It is asserted that the respondent is a clever person and filed multiple cases just to harass and humiliate them. The respondent is aware of the fact that petitioner No.1 is not in a position to attend the Court proceedings at Jhajjar as the distance of District Court, Jhajjar, Haryana is 70 kms from the residence of both the parties.

4. 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 407 read with 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*.

5. 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."

6. 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 **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.”

7. 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 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 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.*

(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.”

8. 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.”

9. Learned counsel for the petitioners, on being confronted with settled law on the issue at hand, could not controvert that the present petition under Section 407 read with 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.

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

(HARPREET SINGH BRAR)
JUDGE

04.04.2024
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No