

CRM-M-38643-2023

2024:PHHC:069956



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-38643-2023

Date of decision: 13th May, 2024

Kanwarjit Singh

...Petitioner

Versus

Navaldeep

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sunny K. Singla, Advocate for the petitioners.

MANISHA BATRA, J:-

The present petition under Section 482 Cr.P.C has been filed by the petitioners for quashing of the criminal complaint bearing No. COMA/145/2022 dated 09.12.2022 under Sections 12, 17, 19(f), 19(d), 19(8), 22 of the Protection of Women from Domestic Violence Act, 2005 (For short "DV Act") alongwith order dated 09.12.2022 whereby the petitioner has been summoned.

2. The aforementioned complaint has been filed by the present respondent-complainant who is the wife of the petitioner. Brief facts of the case as enumerated in the complaint are that the marriage between the parties took place on 02.07.2001 in Abohar. The respondent started living with the petitioner and his family at Malerkotla after marriage. Out of the wedlock two sons have been born. The family members of the petitioner assured the respondent to continue her studies even after marriage and to do a job. However, the family members of the petitioner were not satisfied with



the gold, dowry and cash given in the marriage and started teasing, taunting and misbehaving with the respondent in that regard and even did not allow her to continue her studies and to pursue a job after the marriage. In her complaint, she further alleged that they started treating her as domestic servant refraining her from sitting in the Drawing room and started locking her inside the house whenever they went out for social functions. On 15.01.2015, the present petitioner picked up a quarrel with the respondent at the instance of his mother over trifle and thereafter turned out the respondent from the house after giving beatings to her. On 23.05.2020, the petitioner again at the instance of his mother, brother and sisters picked up a quarrel with the respondent, gave her beatings and again turned her out of the house. The brothers of the respondent came to Malerkotla to convince the petitioner to rehabilitate their sister i.e. the respondent but to no effect for the reason that the mother and sisters of the petitioner did not like the respondent and he could not leave them. Afterwards the petitioner informed the respondent that he was ready to keep the children with him but not the respondent and suggested to take divorce. Thereafter, the petitioner and his family were asked for final settlement by returning the jewellery, stridhan of the respondent and making provisions for her maintenance as well as residence. Since the petitioner refused to rehabilitate the respondent after ousting her from the matrimonial home, the respondent had filed the impugned complaint under the relevant provisions of DV act seeking:

- a.) the right of residence in a shared household or restoration of possession of shared household.



- b.) order directing the petitioner to secure same level of alternate accommodation for the respondent.
- c.) order directing the petitioner to return the dowry articles and stridhan of the respondent.
- d.) order directing the petitioner to not to alienate the shared household.
- e.) compensation order directing the petitioner to pay a sum of Rupees One lakh as compensation and damages for physical and mental torture, mental agony and emotional distress suffered by the respondent.

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

4. 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.

5. 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 18-23 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 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.”

6. 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 the complaint filed under Section 12 of the DV Act. Therefore, the petition stands dismissed.



7. 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 him as per law.

[MANISHA BATRA]
JUDGE

13th May, 2024
Parveen Sharma

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