

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-41313-2023
Date of decision: 9th April, 2024

Raj Rani and another

...Petitioner(s)

Versus

Jaswinder Kaur @ Anju

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Hitesh Chopra, Advocate for the petitioners.

MANISHA BATRA, J (ORAL):-

The instant petition under Section 482 of Cr.P.C. has been filed by the petitioners seeking quashing of complaint No. 112 of 2021 titled as ‘Jaswinder Kaur vs. Santosh Rai and others’ filed under Section 12 of Protection of Women from Domestic Violence Act, 2005 (for short ‘D.V. Act’) pending before the Court of learned Judicial Magistrate Ist Class, Panchkula as well as order dated 06.08.2021, whereby notices have been issued to the petitioners.

2. The brief matrix of the case is that respondent No.1 has filed the aforementioned complaint on the allegations that she was married with Santosh Rai who is son of the present petitioners on 14.04.2002. Two children were born out of the wedlock. Her parents had spent huge amount of money in her marriage, however, her husband and his family members being greedy persons, kept on harassing and humiliating her on one pretext or the other and ultimately, she was made to leave her matrimonial home

after twenty years of her marriage. While levelling several allegations against her husband and the present petitioners, she has prayed for granting reliefs under various provisions of D.V. Act.

3. Learned counsel for the petitioners has submitted that the complaint/petition as filed by the respondent is liable to be quashed as the same has been filed only with a view to harass to them. Infact, the behaviour of the respondent was not proper with the petitioners from the very beginning of her matrimonial life and she kept on insisting their son to take separate residence from his parents i.e. the petitioners and to lead an independent life and so much so that she used to leave her matrimonial home and stayed with her parents without will and desire of her husband thereby compelling their son to live separately from the petitioners from 2010 to 2014. It is submitted that father of the respondent also used to interfere in the matrimonial life of their son to such an extent that he was unable to concentrate on his business which had collapsed in the year 2013-14. The respondent had thereafter started pressurising the petitioners to construct a new house. A separate floor was constructed in the house of the petitioners wherein she started residing with her children and husband. Her behaviour was suspicious as children of the respondent disclosed to the petitioners that in the absence of their father, she used to chat with someone on phone regularly. It is submitted that all the allegations levelled in the complaint by the respondent are false. She had already lodged an FIR under Sections 406, 506 and 498-A of IPC as against the petitioners and the

allegations in the complaint filed under provisions of D.V. Act are the same as levelled in the said FIR and this complaint has been filed by way of abuse of process of law. With regard to question of maintainability of this petition, it is argued that the same is very much maintainable. Accordingly, it is urged that the complaint and impugned order dated 06.08.2021 are liable to be quashed.

4. I have heard learned counsel for the petitioner at considerable length. Since, in my opinion, at the outset this Court is required to go into the question of the maintainability of the petition itself, therefore, the arguments raised on this point are taken into consideration.

5. No doubt, the High Court has inherent powers under Section 482 of Cr.P.C. to do real and substantial justice, for the administration of which alone it exists, or to prevent the abuse of process of the Court. Inherent powers under Section 482 of Cr.P.C. can be exercised to give effect to an order under the Court; to prevent abuse of the Court and otherwise to secure the ends of justice. This power can also be exercised to quash the proceedings, where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings; where the allegations in the FIR or complaint taken at their face value and accepted in their entirety do not constitute an offence; or where though allegations constitute an offence but no legal evidence is adduced or the evidence adduced, clearly or manifestly fails to prove the charge. However, it is also relevant to mention that Section 12 of D.V. Act prescribes the procedure for moving an

application to the Magistrate for obtaining an order for grant of relief. Section 18 provides that a protection order can be passed in favour of aggrieved person by way of issuing prohibitions. Section 19 provides that order regarding shared household/residence can be passed by the concerned Court, under Section 20 monetary relief can be granted to the aggrieved person, under Section 23 order for grant of compensation can be passed and Section 23 provides for interim order which can be passed *ex-parte* in favour of aggrieved person.

6. With regard to the question as to the nature of the proceedings under the aforementioned Sections, an observation was made by Hon'ble Supreme Court in '*Kunapareddy @ Nookala Shanka Balaji Vs. Kunapareddy Swarna Kumari and anther*', 2016(3) RCR (Criminal) 315 that the very purpose of enacting the D.V. Act was to provide for a remedy which is an amalgamation for 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. 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**. The Hon'ble Supreme Court further observed that the procedure for obtaining orders of reliefs as stipulated in Chapter IV of D.V. Act which comprises Section 12 to 29 makes itself clear that these reliefs which can be obtained by the

aggrieved persons are of civil nature and at the same time, when there is a breach of orders passed by the Magistrate under the aforementioned Section, then Section 31 of the D.V. Act comes into operation which is a punishable offence and otherwise the proceedings under the aforementioned Sections are to be treated essentially as of civil nature.

7. Reference can then be made to '**Kamatchi Vs. Laxmi Narayan**', **AIR, 2022 SC 2932** wherein the Hon'ble Supreme Court while relying upon the previous decision made by it in '**Adalat Prasad Vs. Roop Lal Jindal**', **(2004) 7 SCC 338**, had held that the matter where the order of issuance of process is issued in a complaint on taking cognizance, stands on a different footing and cannot be compared with the proceedings under Section 12 of D.V. Act, because scope of notice under Section 12 of the D.V. 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. It was held that considering the nature of the proceedings under the D.V. Act, the same cannot be challenged under Section 482 of Cr.P.C.

8. This Court further considers it important to rely upon '**Arun Daniel Vs. Suganya**', **2022 SCC online Mad 5435**, wherein the Full Bench of High Court of Madras was considering the same question as to whether the proceedings under Section 482 of Cr.P.C. for quashing the proceedings initiated under Section 12 of D.V. Act would be maintainable or not? It was observed that the proceedings under Chapter IV of D.V. Act are not criminal proceedings and a Magistrate exercises civil jurisdiction while granting one

or more reliefs under Sections 18 to 32 of this Act. A Magistrate exercising jurisdiction under Section 12 of D.V. Act is not a criminal Court. It is settled law that jurisdiction is an issue that belongs to the realm of substantive law. Procedural law, on the other hand, prescribes the mode and the manner in which such jurisdiction is to be exercised. It was observed that a character of the Court is an essential aspect of its substantive jurisdiction, and would depend upon the nature or subject matter of the case before it. In para No. 37 of its judgment, it was observed by Court that on considering the character of the proceedings while having regard to the nature of the subject matter and the reliefs sought, there could be no two options that the proceedings under Section 12 of D.V. Act before the Magistrate are essentially civil in character.

9. Moreso, it is also noteworthy that a Co-ordinate Bench of this Court in CRM-M-19953-2023 titled as '*Jaspal Kaur @ Pinky and another Vs. State of Punjab*' decided on 24.04.2023 and another Co-ordinate Bench of this Court in *CRM-M-58023-2023* titled as '*Gautam Singal Vs. Anuj Singal*' decided on 30.11.2023, have also observed that the proceedings under Section 12 of D.V. Act are civil in nature and therefore, petition filed under Section 482 of Cr.P.C. against such petition or notice issued under Section 13 of D.V. Act are not maintainable. Even this Bench has made a similar observation in judgment dated 18.10.2023 passed in *CRM-M-28221-2021* titled as '*Kavita Kumari Vs. Hem Prabha.*'

10. In view of the discussion as made above and while applying the

ratio of law in the authorities cited above, which are applicable to the peculiar facts and circumstances of the present case, this Court is persuaded to hold that the present petition which has been filed under Section 482 of Cr.P.C. challenging the maintainability of the petition filed under Section 12 of the D.V. Act by the respondent and the proceedings having emanated therefrom, cannot be stated to be maintainable. Accordingly, the petition is dismissed. However, it is clarified that the petitioners shall be at liberty to move appropriate application before the concerned Magistrate at the appropriate stage for taking the pleas as taken in this petition and the Magistrate shall pass order on such application, if moved by either of the petitioners for determining the question as to deletion of his/her name from the array of respondents as well as maintainability of the petition qua the petitioners.

11. Since the main petition has been dismissed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

9th April, 2024

Parveen Sharma	1. Whether speaking/ reasoned	:	Yes
	2. Whether reportable	:	Yes