

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

1. CRM-M-45597-2023 (O&M)

Pooja and another
...Petitioners

Versus

Seema
...Respondent

2. CRM-M-5875-2024 (O&M)

Pinki Devi
...Petitioner

Versus

Seema
...Respondent

Date of decision: 14.03.2024

CORAM:- HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Pranav Chamoli, Advocate
for the petitioners in both the petitions.

MANISHA BATRA, J. (Oral)

1. This common order shall dispose of above noted two petitions, filed under Section 482 of the Code of Criminal Procedure (*for short* ‘*Cr.P.C.*’), seeking quashing of criminal complaint bearing No. 263 of 2020 (*Annexure P-1*), titled as *Seema vs. Sunil Garg and others*, filed under Sections 12, 18, 19, 20, 21 and 22 of the Protection of Women from Domestic Violence Act, 2005 (*for short* ‘*DV Act*’) as well as for quashing of order dated 23.11.2020 (*Annexure P-2*), whereby notices have been issued to

the petitioners of both the petitions through protection officer.

2. The aforementioned complaint under the DV Act has been filed by the respondent-Seema against her husband Sunil Garg, mother-in-law Pinki Devi as well as sister-in-law (*Nanad*) and brother-in-law (*Nandoi*) all of whom are petitioners in the aforementioned petitions, on the averments that she was married with petitioner Sunil Garg on on 27.06.2019. Huge amount of money was spent by her parents at the time of marriage but the petitioners were not satisfied with the dowry so given and shortly after the marriage, they started taunting and abusing the respondent and demands for more dowry were raised by them. Respondent also alleged that the fact that petitioner Sunil Garg was only a temporary employee in the office of District Collector, Karnal was concealed and he represented himself to be a regular employee. While levelling several other allegations, the respondent prayed for restraining the respondents from selling the matrimonial shared house and other immoveable properties owned by her in-laws family, directing them to let her stay in her matrimonial house and also for prohibiting them from causing domestic violence against her. She also prayed for giving direction to her husband to give Rs.15,000/- per month as house rent along with Rs. 5 Lakhs as interim relief. Vide order dated 23.11.2020, which is under challenge before this Court, the concerned Judicial Magistrate passed an order of issuance of notice of the said complaint to the present petitioners through protection officer for 17.12.2020.

3. Learned counsel for the petitioners has argued that the petitioners Pooja and Parvesh, who are sister-in-law and brother-in-law respectively of the respondent, do not fall within the meaning of

‘respondent’ as defined under Section 2 (q) of DV Act. Neither they could be stated to be in domestic relationship with the complainant and, therefore, no notice could be issued against them. It has been contended that petitioner Pinki Devi, who is mother-in-law of the respondent, lived with her only for a brief period and soon thereafter, she along with her husband had shifted to a rented accommodation at Karnal and, therefore, the house of this petitioner could not be treated as ‘shared household’ for any liability towards her nor she falls within the definition of ‘respondent’ within the meaning of DV Act. It is also argued that the respondent has filed her complaint on false and frivolous grounds, just to harass the petitioners. Therefore, the impugned complaint as well as the impugned order, whereby the petitioners have been issued notice through protection officer, are liable to be quashed. With regard to maintainability of the petitions, it is argued by him that the same are very much maintainable.

4. The arguments raised by learned counsel for the petitioners have been heard at considerable length, besides perusing the material placed on record.

5. At the outset, it would be profitable to look into the scope and ambit of the power of the High Court under Section 482 of Cr.P.C, the Hon’ble Supreme Court in a catena of decisions has clearly spelt out the scope of this provision, as per which, every high Court has inherent power to *ex justiatie* i.e. to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the 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. Reference in this regard can be made to ***State of Haryana Vs. Bhajan Lal, 1991 (1) RCR (Criminal) 383, R.P. Kapoor Vs. State of Punjab, 1960 AIR (Supreme Court) 866, Gorige Pentaih Vs. State of Andhra Pradesh, 2008(4) RCR (Criminal) 171.***

6. Since this Court has to firstly embark upon the question of maintainability of the instant petitions, which have been filed by the petitioners under Section 482 Cr.P.C. challenging the complaint filed by the respondent under Section 12 of the DV Act, whereby reliefs under Sections 18 to 20, 22 and 23 have been claimed, therefore, this Court considers it relevant to mention here 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.

7. 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 another, 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.

8. Reference can then be made to ***Kamatchi Vs. Laxmi Naryanan, 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.

9. 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 Hon'ble 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.

10. While considering the ratio of law laid down in the above cited authorities, a co-ordinate Bench of this Court in ***CRM-M-19553-2023***, titled as ***Jaspal Kaur @ Pinky and another Vs. State of Punjab***, decided on 24.04.2023 and another co-ordinate Bench in ***CRM-M-58023-2023*** titled as ***Gautam Singal Vs. Anuj Singal***, decided on 30.11.2023, have observed that

the proceedings under Section 12 of the DV Act are civil in nature and, therefore, a petition under Section 482 Cr.P.C. against such complaint and notice issued under Section 13 of the DV Act are not maintainable. This Court has also made similar observations in **CRM-M-28221-2021**, titled as **Kavita Kumari vs. Hem Prabha**, decided on 18.10.2023.

11. 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 petitions, which have been filed under Section 482 Cr.P.C. challenging the aforesaid complaint filed under Section 12 of the D.V. Act by the respondent and the proceedings having emanated therefrom, cannot be stated to be criminal in nature and are not maintainable. Accordingly, the same are dismissed.

12. However, it is also observed that the petitioners shall be at liberty to move appropriate application on the ground of maintainability before the concerned Magistrate, who shall pass an appropriate order qua maintainability of the petition under Section 12 of DV Act against the petitioners including the determination of the question as to deletion of their name from the array of the respondents and maintainability of the petition qua them.

13. Let a photocopy of this order be placed on the file of the connected case.

14.03.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes