

115

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-55949-2023 (O&M)
Date of decision: 12.08.2024

Vijay Laxmi and others

... Petitioners

Vs.

Dipsy

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mandeep Singh Kundu, Advocate
for the petitioners.

HARPREET SINGH BRAR, J. (ORAL)

1. The instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for quashing of Complaint bearing case No.COMA-269-2022, instituted on 18.11.2022 (Annexure P-1) titled as *Dipsy Vs. Gaurav Sharma and others*, filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act'), pending before learned Chief Judicial Magistrate, Sonipat, District Sonipat and all the subsequent proceedings emanating therefrom.

2. Brief facts of the case are that marriage of the respondent was

2024:PHHC:103427



solemnized with son of petitioner No.1, namely Gaurav Sharma according to Hindu rites and rituals and sufficient istridhan was given by her parents, which is now in custody of the petitioners and about Rs.25.00 lacs were spent on the said marriage and other functions. Thereafter, the respondent and her husband stayed at Panipat as per wish of the petitioners and during that period, she was maltreated by them for not bringing sufficient dowry according to their status, as petitioners No.1 & 2 clearly stated that they had been defamed in the society, as her parents did not give car in the marriage, whereas son of petitioner No.1 is an officer in Steel Plant Bhilai and is drawing salary of Rs.1.00 lac. The petitioners threatened the respondent either to leave the matrimonial house or they would eliminate her. Petitioners No.1 & 2 continued to harass the respondent to bring a car from her parents and after few days, they added petitioner No.3 & 4 in that sequence. All the members of her in-laws were working and only the respondent was unemployed at the time of her marriage. On instigation of petitioners No.1 & 2, husband of the respondent also started misbehaving with her and gave beatings to her. Thereafter, on 21.06.2016, husband of the respondent took the respondent with him to Bhilai, Chhattisgarh, where he was working, but she was not given due respect as that of wife and even did not hand over money to her to meet out the daily essential needs and she was treated as maid. In the party functions, he did not allow the respondent to accompany him so that his employee may not know about

2024:PHHC:103427



her and he mentally harassed her and used to keep her in a room like a slave. On 17.11.2017, after giving merciless beating by her husband, the respondent was shunted out of the rental accommodation. Thereafter, she informed to her parents and her brother took her to Sonapat, where she stayed a number of days. When parents of the respondent reported the matter to the petitioners about the atrocities caused to the respondent, they neither respected her parents and even blamed for maltreatment and echoed with voice that they would not keep the petitioner with them nor they would allow her husband to treat the respondent as his legally wedded wife and would create such circumstance that the respondent would eliminate her life. The petitioners misused the istridhan and refused to return the same. Thereafter, parents of the respondent tried to reconcile the matter with the intervention of relatives, friends and mediators, but all in vain.

3. It is further alleged in the complaint that in 08.01.2018, the respondent submitted an application before the jurisdictional police authorities at Sonipat against the petitioners and the matter was referred to the Mediation Centre, but the petitioners did not turn up; rather husband of the respondent contact her on 13.03.2018 and requested her to accompany him to Bhilai and he assured not to repeat such thing again. In this respect, petitioners No.1 & 4 also signed the compromise deed and the same was handed over to the police. Thereafter, the respondent along with her husband went to Bhilai and stayed till 22.10.2022 and during that period,

2024:PHHC:103427



she was maltreated and the petitioners called her as 'Banjh', due to which, she got disturbed. Her husband continued to harass her. In order to push the marital life of the respondent, her parents gave T.V., freeze and other essential items, while staying at Bhilai, but the same could not quench thirst of the petitioners. On 02.11.2021, at about 09.00 p.m., petitioner No.4 entered in the bed room of the respondent and tried to molest her, but when she created hue and cry, the petitioners came there and requested not to disclose about the incident to her parents. As such, the respondent, while taking into consideration her image and her family members, she kept mum. On the even of Diwali on 21.10.2022, when the respondent requested her husband to bring some diyas, he denied and beating her up badly and gave 30 slaps to her and also tried to choke her neck. She tried to save herself and in this incident, her husband also sustained minor injury. The respondent reported the matter to the local police at Bhilai on 22.10.2022 and her MLR was prepared by the doctor. After conveying about the incident to her parents and finding her life in danger, brother of the respondent took her to Sonapat. With these allegations, complaint (*supra*) was submitted before learned Chief Judicial Magistrate, Sonapat.

4. Having heard learned counsel for the petitioners and after perusing the record of the case with his able assistance, this Court is of the considered view that a petition under Section 482 of Cr.P.C. is not maintainable qua proceedings arising out of Section 12 of the Act as

2024:PHHC:103427



concluded by a Co-ordinate Bench in ***Jaspal Kaur alias Pinki and others Vs. 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 Vs. 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 Vs. 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

2024:PHHC:103427



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, the notice under Section 13 of the Act is not akin for 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.

2024:PHHC:103427



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 analyzing various judicial precedents including judgments rendered by the Hon'ble Supreme Court in **Kamatchi's** case (*supra*) and **Kunapareddy's** case (*supra*), 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

2024:PHHC:103427



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,

2024:PHHC:103427



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**'s case (*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

2024:PHHC:103427

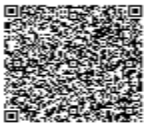


maintainability or jurisdiction or for deletion from the array of respondents, Magistrate is supposed to adjudicate the application.”

9. Learned counsel for the petitioners submits that a Co-ordinate Bench of the Bombay High Court in ***Dhananjay Mohan Zombade and others vs. Prachi 2023 M.C.R. 1104*** has opined that the intention of the legislature for Cr.P.C. to be applicable to the proceedings under DV Act is evident and that the inherent power of the High Courts to try cases pertaining to DV Act filed under Section 482 Cr.P.C. would not be ousted unless specific provisions qua the same. Reliance was placed on the judgment rendered by a Full Bench of the Bombay High Court in ***Nandkishor Pralhad Vyawahare vs. Mangla w/o Pratap Bansar 2018 (3) Mh.L.J. 913***. However, the Full Bench, having co-equal strength, of the Madras High Court in ***Arun Daniel(supra)*** has disagreed with the ratio of law laid down in ***Nandkishor(supra)***. Moreover, the Special Leave Petition (SLP (Crl.) No. 7533/2024) against the judgment of a Co-ordinate bench of this Court in ***Harwinder Singh vs. State of Punjab and another CRM-M-16544-2024*** decided on 30.04.2024, wherein a similar view has been taken, was declined by the Hon'ble Supreme Court vide order dated 09.07.2024, while keeping the question of law open. As such, this Court would like to respectfully disagree with the view taken by the Bombay High Court in ***Dhananjay Mohan Zombade(supra)***.

10. Accordingly, the present petition is dismissed. However, the

2024:PHHC:103427



petitioners 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.

12.08.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No