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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 16.04.2024

Anupama

...Petitioner

V/s

Vishal Gera and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Ms. Ashima Mor, Advocate for the petitioner.

Ms. Kiran Bala Jain, Advocate for the respondents.

SUMEET GOEL, J. (Oral)

1. The instant criminal revision petition arises out of orders passed by Courts below in a complaint filed under Section 12 of Protection of Women from Domestic Violence Act, 2005.
2. Vide order dated 09.09.2022 passed by learned Judicial Magistrate First Class, Ambala; a residence order was passed in favour of the petitioner-wife. The said order came to be challenged by way of an appeal before the Additional Sessions Court, Ambala & vide order dated 04.10.2022, the said Court accepted the appeal. It is in this background that the criminal revision petition has been preferred before this Court.
3. Learned counsel appearing for the respondents has raised a preliminary submission that the present criminal revision petition is not maintainable and the petitioner ought to have sought the remedy by way of civil proceedings. Learned counsel appearing for the respondents has relied upon the dicta of judgment passed by this Court in CRM-M-19553-2023 titled as *Jaspal Kaur @ Pinki vs. State of Punjab and others*, decided on

24.04.2023; relevant whereof reads as under:

“From the above cited judgments following principles are culled out:

*(i) Proceedings under Section 12 of DV Act are civil in nature. Notice issued under Section 13 of DV 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.”

4. Learned counsel for the petitioner has submitted that the present petition arises out of proceedings under the Protection of Women from Domestic Violence Act, 2005 and thus remedy by way of a criminal revision petition can be sought for.

5. I have heard learned counsel for the parties and have perused the record.

6. The dicta of the judgment of this Court in *Jaspal Kaur alias Panki* (supra) is unequivocal that petitioner ought to have resorted to civil proceedings and the instant criminal revision petition is not maintainable. Still further, in a judgment in CRM-M-58023-2023 titled as ***Gautam Singal vs. Anuj Singal***, decided on 30.11.2023, a coordinate Bench of this Court has held as under:

“19. In view of the aforesaid discussion, the following conclusions are made:-

*(i) That Hon'ble the Apex Court in **Kunapareddy @ Nookala Shanka Balaji's** case (supra) has held that the relief granted under*

Sections 12 to 23 are of civil nature, however, whenever there is a breach of such an order passed by the Magistrate only then the breach is punishable as an offence under Section 31 of the DV Act.

*(ii) Hon'ble the Apex Court in **Kamatchi's case** (supra) has held that application under Section 12 of the DV Act cannot be equated with the complaint or initiation of prosecution.*

*(iii) The Hon'ble Full Bench of Madras High Court in **Arul Daniel's** (supra) held that proceeding under Chapter IV of the D.V. Act cannot be challenged by invoking the provisions of Section 482 Cr.P.C. The Hon'ble Full Bench of Madras High Court gave the said observations by placing reliance upon the observations made by Hon'ble the Apex Court in **Kunapareddy @ Nookala Shanka Balaji's** and **Kamatchi's cases** (supra) and while distinguishing the previous observations made on 16.02.2023 by Hon'ble the Full Bench of the Bombay High Court in **Dhananjay Mohan Zombade's case** (supra).*

(iv) The Order passed under Section 23 and Section 29 of the DV Act falls within the proceedings under Chapter IV of the D.V. Act and the relief granted to the respondents against the petitioners is civil in nature.

(v) The impugned order does not fall within Section 31 of the DV Act as it is not a penalty for breach of any order passed by the Magistrate under Chapter IV or breach of any interim protection order granted by the Magistrate under the said Chapter.”

*20. Consequent to the above discussion, it is held that the impugned orders passed under section 23 and 29 of the DV Act, which falls within Chapter IV of the DV Act are not criminal in nature and, as such, the petition under Section 482 of the Code is not maintainable, since this question is no longer res integra in view of the observations made by Hon'ble the Apex Court in **Kunapareddy @ Nookala Shanka Balaji's** and **Kamatchi's cases** (supra) and decision of Hon'ble the Full Bench of Madras High Court in Arul Daniel's (supra).”*

7. The dicta of above said judgments in the case of *Jaspal Kaur alias Pinki* (supra) as also *Gautam Singal* (supra) leads to the ineluctable conclusion that the present criminal revision petition is not maintainable.

8. In view of the above, the instant revision petition is dismissed being not maintainable. Needless to state herein that this Court has not

delved into the merits of the matter in hand and the same has been left open

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to be considered in appropriate proceedings, if so filed by the petitioner.

(SUMEET GOEL)
JUDGE

April 16, 2024
Ajay

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