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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 10.01.2024
Pronounced on: 29.01.2024

+ **W.P.(CRL.) 1217/2023 & CRL.M.A. 11401/2023**

ABHISHEK KUMAR Petitioner

Through: Petitioner in person

versus

NEHA LAL Respondent

Through: Mr. Anuj Prakash, Mr. Niraj
Dubey and Mr. Pradum
Kumar, Advocates

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('*Cr.P.C.*') has been filed by the petitioner, seeking appropriate writ(s)/direction(s) for setting aside of impugned order dated 06.04.2023 passed by learned Additional Sessions Judge-03, East District, Karkardooma Courts, Delhi ('*Sessions Court*'), and for quashing of the complaint filed under Section 12 of Protection of Women from Domestic Violence Act, 2005 ('*PWDV Act*') pending before the learned Metropolitan Magistrate, Mahila Court-02, East District, Karkardooma Courts, Delhi ('*Trial Court*').



2. The case set up by the petitioner is, that after solemnization of his marriage with respondent on 28.01.2012 at Bihar, he and the respondent had come to Indirapuram, Gaziabad, Uttar Pradesh on 31.02.2012 and had started residing together. On 02.02.2012, the mother and elder sister of respondent had also come to stay at the matrimonial home of the respondent and had started residing there along with newly-wed couple. On 05.02.2012, the petitioner's mother, elder sister, elder brother-in-law and younger cousin sister had visited his house to attend a *puja* ceremony and had thereafter returned to their home, but the respondent's family had continued to reside with them till 08.02.2012. On 09.02.2012, the mother and elder sister of respondent had gone back to Bihar, and on the same day, the petitioner and respondent had gone to Goa, and had returned to Delhi on 14.02.2012. On 18.02.2012, again the respondent's mother, father and her elder sister had come to the matrimonial home to stay with them. After a few days, elder sister of respondent had left for Lucknow, U.P., however, the parents of the respondent had continued to live with them. It is stated that on 25.02.2012, the pregnancy of the respondent was confirmed. On 02.04.2012, the respondent had left the matrimonial home along with her parents after giving keys of the matrimonial home to the security guard in the absence of petitioner. Thereafter, the respondent had started living on rent at Pandav Nagar, Delhi secretly by changing her identity as an unmarried girl and had given incorrect false information in her tenant verification form at PS Pandav Nagar, Delhi with regard to her permanent and last residing address. It is stated that on 14.05.2012,



she had filed a complaint before the ACP, CAW Cell (East) Delhi for forcible abortion and allegations of harassment for dowry, against the petitioner and his relatives which was later on, i.e. on 28.08.2012, registered as an FIR No. 0361/2012, for offences punishable under Sections 498A/406/34 of Indian Penal Code, 1860 (*IPC*), at PS Pandav Nagar, Delhi. On 20.07.2012, the respondent had filed the present complaint under Section 12 of PWDV Act. On 31.07.2012, the respondent had also filed a complaint under Section 125 of Cr.P.C seeking maintenance from the petitioner. It is stated that the title of application filed under Section 125 of Cr.P.C revealed that respondent had sought monthly allowance for herself and her son. It is further stated that during counseling before CAW Cell (East) Delhi on 23.06.2012, the respondent had also filed a complaint before P.S. Madhu Vihar, Delhi against petitioner and his elder brother-in-law for the purpose of their false implication under Section 498A of IPC. It is stated that on 20.12.2012, in response to complaint filed by the respondent under PWDV Act, he had taken a preliminary objection in the reply that the complainant had not come to the court with clean hands and had suppressed material facts and therefore, the complaint be dismissed. It is also stated that despite a lapse of 10 years, the court has not considered this vital fact and the respondent, as a dishonest litigant, has succeeded in deliberately abusing the process of law. It is stated that in spite of pending investigation in the FIR registered under Section 498A of IPC, she had filed another complaint under Section 156(3) of Cr.P.C. seeking registration of a separate FIR or inclusion of Section 313 and 120B of IPC in



aforesaid FIR pertaining to offence under Section 498A of IPC. It is stated that on 14.03.2014, the learned CMM concerned had tagged this present complaint under Section 210 of Cr.P.C. with the chargesheet in the aforesaid FIR for offence under Section 498A of IPC. It is stated that on 14.08.2014, the respondent had filed her financial affidavit before the learned Trial Court on false averments and details. Also on 14.08.2014, the police had filed a report before the learned Trial Court, after conducting detail investigation at Mumbai, with regard to false allegations of forcible abortion of respondent. It is stated that the learned Trial Court's order dated 17.01.2015 proves that respondent had concealed vital documents in her financial affidavit. On 18.10.2014, the petitioner had filed an application under Section 340 of Cr.P.C against the respondent for deliberately concealing the vital material facts and documents in her financial affidavit, and then on 28.08.2015, the respondent had filed one more affidavit after filing of 340 of Cr.P.C application by petitioner. It is stated that on 07.02.2019, learned Family Court, East, Karkardooma Courts, Delhi, had pronounced final judgment in case under Section 125 of Cr.P.C. and had awarded final monthly allowance of Rs.10,000/- per month to the respondent. It is stated that after one year of marriage, a divorce petition was also filed by the respondent on grounds of cruelty, but the same was dismissed by the learned Family Court, Shahadra, Karkardooma Courts, Delhi on 04.04.2019.

3. It is stated that on 07.03.2020, the learned MM, East, Karkardooma Courts, Delhi, had pronounced the final judgement in



the case pertaining to FIR registered for offence under Sections 498A/406 of IPC, and the petitioner was acquitted in the said case. It is the case of petitioner that the allegations leveled in the complaint filed under PWDV Act and the complaint under Section 498A of IPC are exactly same. It is stated that his application filed under Section 28 of PWDV Act read with Article 21 seeking to quash the proceedings under DV Act was dismissed on 06.10.2022 by the learned Trial Court *vide* following order:

“...Considering that the present petition was filed in the year 2012, further prayers of respondent to pay compensation of Rs. 12 Lakhs by petitioner for malicious prosecution without the trial is done and for killing his unborn baby is without merit as the trial is still continuing in the present matter. Accordingly; present application is disposed off as dismissed ...”

4. The petitioner submits that he had filed another application on 12.10.2022 under Section 25(2) read with Section 28 of PWDV Act and read with Article 14 and 21 of the Constitution of India, seeking cancellation of ongoing false judicial prosecution against him and for grant of compensation. He states that on 07.11.2022, the learned Trial Court has kept his application pending, observing that the order on this application will be passed after the conclusion of trial. On 09.11.2022, the petitioner had filed an application under Section 410 of Cr.P.C before the learned CMM(East), Karkardooma Courts, Delhi seeking transfer of the case from the concerned Judge since his application had been kept pending without calling for a reply, but the same was dismissed. On 24.03.2023, the petitioner had preferred a revision petition before the learned Sessions Court whereby the order



dated 07.11.2022 passed by the learned Trial Court was challenged. He state that on 06.04.2023, this revision petition was also dismissed incorrectly by the learned Sessions Court, and the said order has been impugned by him before this Court by way of present writ petition.

5. It is stated that all the material filed by the respondent and evidence led by her before the learned Trial Court are false and fabricated and that there is willful and consistent desertion on the part of respondent without any sufficient and justifiable grounds. It is also argued that a wife who deserts her husband is not entitled to get any relief under Section 12 of PWDV Act. He further states that one decade has passed since he is fighting the present case, which has resulted in loss of his respect in the society and therefore, he should have also be granted compensation from the respondent.

6. It is stated that the present trial against petitioner demands "*the test of reasonableness*" in respect of his fundamental rights guaranteed under Article 21 and Article 14 of the Constitution of India. It is also stated that the right to live with dignity is the inalienable right of the petitioner, and *both the Magisterial Court as well as the Sessions Court have turned a blind eye towards the petitioner and they have not bothered to get to the bottom in safeguarding the 'life and liberty' of the petitioner and in protecting the serious 'abuse of process of law and courts'*. It is stated that the '*majesty of the law*' has been injured by the respondent for her personal gains, and thus, she deserves no sympathy. It is stated that in this case, allowing trial would amount to allowing a dishonest and unscrupulous highly educated professionally qualified clever litigant



to further '*pollute the stream of justice*'. It is further submitted that learned Trial Court is being used as an '*instrument of fraud*' which ought not be allowed by this Court. It is also his case that '*leniency*' is being misused by a woman resulted in making the '*mockery of the justice department*'.

7. Learned counsel for respondent, on the other hand, argues that petitioner has not been able to satisfy that there exists any ground for the quashing of present complaint under Section 12 of PWDV Act. It is stated that the matter is still at the stage of recording of defence evidence before the learned Trial Court, and the petitioner can raise all these arguments before the learned Trial Court since these issues cannot be adjudicated in the present petition as they are matter of trial. It is thus prayed that present petition be dismissed since there is no infirmity in the orders passed by the Courts below.

8. This Court has heard arguments addressed by both the parties, and has considered the material placed on record as well as the trial court record.

9. The genesis for filing the present petition, is one application filed under Sections 25(2) and 28 of PWDV Act, before the learned Trial Court, wherein the petitioner had sought re-call of order dated 21.07.2012 i.e. the order *vide* which the petitioner was summoned in the present case pursuant to filing of complaint by the respondent. The relevant portion of order dated 21.07.2012 reads as under:

“Let, notice of this petition be Issued to the Protection Officer for filing of DIR.

Let, respondent no.1 be served through Protection Officer vide PF/RC/speed post/courier and In the event of protection



officer seeking help of process serving agency of police or Nazarat Branch, the concerned Incharge shall depute the process server for effecting the service on the respondents on behalf of protection officer.

Let, copy of the complaint be filed In triplicate by the complainant alongwith process fee for forwarding of the same to the process serving agency of the police / District Nazir. At this stage petitioner states that after the present petition was drafted she has now to come to know of other addresses of the respondent no.1 accordingly, with the PF the fresh address be also filed and notice be Issued at the fresh address as well.

Put up for report on 02.11.12.”

10. It was contended by the petitioner, by way of aforesaid application filed under Sections 25(2) and 28 of PWDV Act, that the complainant had knowingly misstated the facts by concealing true material facts in her pleadings and had thereby induced the learned Trial Court to pass a wrong judicial order on 21.07.2012 which was thus, vitiated by fraud played by the complainant on the Court. It was also submitted the vital change in the facts and circumstances of this case were the evidences available on record i.e. (i) exhibited evidences, (ii) testimonies of complainant and, (iii) the final unchallenged judgment passed by the learned Trial Court in the FIR which was registered under Sections 498A/406 of IPC, and that all these evidences are fatally affecting the existence of the present false and frivolous complaint of complainant.

11. The learned Trial Court, *vide* order dated 07.11.2022, while considering the application filed by the petitioner, had observed as under:



“Last opportunity is given to the petitioner to conclude her evidence failing which her evidence will not be read in the case and matter will be proceed further as per law.

Application u/s 25 r/w 28 DV Act already filed by R1. Order on said application will be given after the conclusion of trial.

Put up for further proceedings on 18.04.2023.”

12. Thereafter, the petitioner had challenged the aforesaid order by filing *Criminal Revision No. 31/2023* before the learned Sessions Court. The said petition was disposed of *vide* impugned order dated 06.04.2023, which reads as under:

“1. Vide this order, this Court will decide the Criminal Revision Petition challenging the order dated 07.11.2022, whereby, the application under Section 25 r/w Section 28 of Protection of Women from Domestic Violence Act, 2005 (in short "PWDV Act") was kept pending and it was observed that the order on the application will be passed after conclusion of the trial.

3. The perusal of order dated 07.11.2022 reveals that the matter was listed for the evidence of petitioner (respondent herein) and she was given final opportunity to lead evidence on 18.04.2023.

4. Perusal of application under Section 25(2) r/w Sec. 28 of the PWDV Act filed by the husband (petitioner herein) reveals that husband (petitioner herein) wanted to address arguments, which are actually to be addressed after the conclusion of trial. The said application nowhere particularly reveals that how the circumstances, which were not existed prior to Section-12 of PWDV Act, have changed subsequently. Furthermore, the entire issues, which have been raised in the application, are matter of trial and the same cannot be adjudicated only on the threshold of filing an application under Section 25(2) of PWDV Act. Id. Trial Court instead of passing the detailed order in the said application, has come to the conclusion that the said application would be considered after conclusion of the entire trial. The matter before the Id. Trial Court is pending for PE on 18.04.2023 and in case, the complainant/ respondent



failed to lead evidence before the Id. Trial Court, then, if the revisionist/husband is so sure that without his evidence, he can succeed, then, the revisionist/husband has every opportunity to close his evidence and straightaway address final arguments, which he intends to address by way of filing the application under Section 25 r/w Sec. 28 of PWDV Act. The Id. Trial Court cannot be forced to look into the application prior to conclusion of the trial as the averments of the application is such that the same is the defence of the revisionist/ husband and the same can be looked into after conclusion of the trial.

5. In view of the overall facts and circumstances, this Court is of the considered view that the present petition has no merits at this stage and Id. Trial Court is directed to expedite the matter, which is pending before Id. Trial Court since 2016 and may make all endeavour to conclude the same within a period of six months from 18.04.2023.”

13. This Court has perused the contents of the application filed under Sections 25(2) and 28 of PWDV Act before the learned Trial Court as well as the Criminal Revision Petition filed before the learned Sessions Court, and has also examined the findings returned by both the learned Trial Courts while passing orders dated 07.11.2022 and 06.04.2023.

14. Having considered the same, this Court is of the opinion that the learned Sessions Court has rightly observed that the issues that the petitioner had raised in the application filed under Sections 25(2) and 28 of PWDV Act and the arguments which he had sought to address were, in fact, to be addressed after the conclusion of trial. The averments made in the application were the probable defence of the petitioner, which he could have highlighted at the stage of recording of his evidence and thereafter, also at the stage of addressing final arguments in the present case. The learned Sessions



Court also rightly observed that all the issues, which had been raised in the application, were matter of trial and the same could not be adjudicated upon while dealing with an application filed under Section 25(2) of PWDV Act when the trial is going on and the defence evidence is yet to be recorded.

15. This Court also notes that it is the case of petitioner himself that Section 28 of PWDV Act provides powers to the Trial Court to lay down its own procedure for disposal of an application/complaint filed under Section 12 of the Act. Therefore, when the petitioner had sought re-call of order dated 21.07.2012 i.e. the order *vide* which notice was issued to him, the effective relief sought was the dismissal of present complaint filed by the complainant/respondent before conclusion of trial. In such circumstances, the learned Trial Court had committed no irregularity by holding that the application filed by the petitioner would be disposed of after conclusion of trial i.e. after recording of entire evidence, since the issues and contentions raised by the petitioner were a matter of trial and he can raise these contentions before the learned Trial Court at the time of recording of his evidence, after conclusion of prosecution evidence, or while addressing the final arguments, instead of addressing all these issues in one application filed under Sections 25(2) and 28 of PWDV Act at a stage when cross-examination of complainant was yet to be completed. Further, the learned Trial Court would have the liberty, after conclusion of trial, to either pass an effective order on the said application or to dispose of the same alongwith the final judgment in the present case.



16. The petitioner had made another prayer before the learned Trial Court while filing the application under Sections 25(2) and 28 of PWDV Act, and a similar prayer has also been made before this Court, i.e. ‘to direct the respondent in the interest of justice and equality to compensate petitioner by payment of Rs.12 lakhs on account of his unlawful judicial prosecution for more than a decade without any justifiable reason based on several serious falsehoods and fabrication’. In this regard, this Court is of the opinion that such a prayer can only be considered after conclusion of trial and final outcome of the case, since before even recording the evidence of both the parties and concluding as to whether reliefs, as prayed for, are to be granted to the respondent/wife under PWDV Act or not, the Court cannot order compensation to be paid to the petitioner on the grounds that he has been falsely implicated in this case without any justifiable reasons. The correctness or falsity of the allegations levelled against the petitioner, cannot be decided without a full-fledged trial, and therefore, the application filed by the petitioner before the learned Trial Court was pre-mature and has rightly been held to be so.

17. Thus, in this Court’s opinion, there is no infirmity with the orders dated 07.11.2022 and 06.04.2023 passed by both the Courts below.

18. As regards another prayer in this petition i.e. quashing of complaint filed under Section 12 of PWDV Act, this Court notes that quashing has been sought on similar grounds on which the re-call of order dated 21.07.2012 was sought before the learned Trial Court. Thus, it is the main argument of the petitioner that since he has been



acquitted in the case arising out of FIR No. 361/2012, P.S. Pandav Nagar, Delhi, registered under Sections 498A/406 of IPC, the entire evidence of the complainant has already been appreciated and found untrue, and therefore, nothing survives in the present complaint case, which is also false frivolous.

19. However, this Court is of the considered view that acquittal of petitioner in a case under Sections 498A/406 of IPC, since the prosecution's case could not be proved beyond reasonable doubt, cannot become a sole criteria for quashing of present complaint under PWDV Act, since the intent of both these laws as well as the procedure and the possible reliefs under them are completely distinct from each other. As already taken note of in preceding discussion, the contentions which the petitioner has raised before this Court as well as in the application filed under Sections 25(2) and 28 of PWDV Act are all matters of trial, which can be appreciated only once the entire evidence is recorded by the learned Trial Court.

20. In the present case, the complainant's part examination-in-chief was recorded on 23.08.2017 and the same was deferred for want of original document, which she was directed to bring on the next date of hearing. On 21.02.2019, her examination-in-chief was concluded and she was partly examined by the counsel for present petitioner. The complainant was further cross-examined on 04.07.2019 and the cross-examination was deferred as she was not feeling well. Thereafter, on 10.10.2019, the parties had expressed their willingness to settle the present dispute. On 15.01.2022 and 22.04.2022, no one had appeared on behalf of the complainant and



the learned Trial Court had issued court notice to her, for pursuing her case. *Vide* order dated 06.10.2022, the matter was listed for remaining cross-examination of complainant on 07.11.2022, and on 07.11.2022, last opportunity was granted to the complainant to conclude her evidence. The right of complainant to lead evidence now stands closed *vide* order dated 18.04.2023 passed by the learned Trial Court, since she had again failed to appear before the Court.

21. The present matter is currently at the stage of recording of respondent/defence evidence, which is yet to be recorded. The final arguments in the present case are also yet to be addressed by both the parties. In this Court's opinion, the petitioner shall have the liberty to raise and address arguments on all the issues raised before this Court, at appropriate stage before the learned Trial Court. Thus, no ground for quashing of complaint filed by the respondent herein under Section 12 of PWDV Act is made out.

22. However, considering the fact that the present case has been pending for about 12 years and the evidence has yet not been recorded completely, and since the essence of real justice lies in its sensitivity and expeditiousness, the learned Trial Court is requested to conclude the trial within a period of six months from receipt of copy of this judgment.

23. In above terms, the present petition alongwith pending application, if any, stands disposed of.

24. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 29, 2024/zp