



2024:DHC:4863



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

Reserved on: 15.05.2024

Pronounced on: 02.07.2024

+ **CRL.M.C. 2438/2022 & CRL.M.A. 10270/2022**

JITIN MITTAL & ORS.

..... Petitioners

Through: Mr.Awanish Kumar, Mr.S.K.
Pandey, Mr.Chandrashekhar A.
Chakalabbi, Mr.Anshul Rai &
Mr.Sanket Ambali, Advs.

Versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr.Shoaib Haider, APP.
Mr.Sameer Chandra, Mr.Aryan
Tomar & Mr.Shubham
Parashar, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), seeking quashing of Complaint Case bearing No.1645 of 2021, titled as Payal Mittal v. Jitin Mittal & Ors. (hereinafter referred to as the 'Complaint'), filed under Sections 12, 17, 18, 19, 20 and 22 of the Protection of Women from the Domestic Violence Act, 2005 (hereinafter referred to as 'DV Act') by the respondent no.2 herein against the petitioners and pending adjudication before the Court of the learned Metropolitan



Magistrate, New Delhi District, Patiala House Courts, New Delhi (hereinafter referred to as 'MM').

2. The petitioners have also challenged the order dated 01.02.2022 passed by the learned MM (hereinafter referred to as the 'Impugned Order'), issuing summons on the above Complaint to the petitioners.

Facts of the Case:

3. The respondent no. 2/wife has filed the said Complaint against the petitioner no. 1, who is her husband, and also against petitioner no.2 and 3, who are the Mother-in-law and Brother-in-law of the respondent no. 2, respectively.

4. In the complaint, the complainant *inter alia* alleges that the petitioner no. 1 and respondent no. 2 were married on 07.04.2019, as per Hindu rites and customs. Thereafter, she lived with the petitioners at her matrimonial home in Jodhpur. It is alleged that the petitioners herein used to pressurize the respondent no. 2 and her family for dowry and that the respondent no. 2 was subjected to extreme cruelty, torture, emotional and mental agony at her matrimonial home.

5. It is further alleged that since 23.06.2021, the respondent no. 2 along with the minor child born from the wedlock is residing at her maternal home in Delhi.

6. It is alleged that she has no means to sustain herself and the child.

7. The respondent no. 2 filed the said Complaint before the learned MM *inter alia* claiming monthly maintenance from the petitioners herein.



8. The learned MM, vide the Impugned Order was pleased to issue summons to the petitioners on the Complaint.

9. The petitioners, aggrieved by the Impugned Order, have filed the present petition seeking quashing of the Complaint before the learned MM.

Submissions of learned counsel for Petitioners:

10. The learned counsel for the petitioners submits that none of the petitioners herein/respondents in the Complaint resides within the territorial jurisdiction of the Court of the learned MM at Delhi. He submits that the petitioners are the local residents of Jodhpur. He submits that Section 202 of the Cr.P.C. mandates a Magistrate to conduct an enquiry before summoning the accused living beyond his jurisdiction. He submits that the learned MM should have followed the procedure laid down by the Section 202 of the Cr.P.C. before summoning the accused persons/petitioners in the said Complaint. He places reliance on the judgments of the Supreme Court in ***Abhijit Pawar v. Hemant Madhukar Nimbalkar & Anr.***, (2017) 3 SCC 528; ***Shyamlal Devda & Ors. v. Parimala***, (2020) 3 SCC 14; of the Kerela High Court in ***Baiju & Anr. v. Latha & Anr.***, 2011 SCC Online Ker 4156; of the Gujarat High Court in ***Suo Motu v. Ushaben Kishorbhai Mistry***, 2015 SCC Online Guj 6262; of the Bombay High Court in ***Nandkishor Pralhad Vyawahare v. Mangala***, 2018 SCC Online Bom 923; of the Calcutta High Court in ***Chaitanya Singhania & Anr. v. Khusboo Singhania***, 2021 SCC Online Cal 2602; and the Judgment dated 10.10.2021 of the High Court of Karnataka in Criminal Petition No. 200009/2021 titled as ***Mareppa v. Pushapanjali***.



11. By relying on the judgment of the Supreme Court in *Indian Oil Corpn. v. NEPC India Ltd. & Ors.*, (2006) 6 SCC 736, the learned counsel for petitioners submits that the Complaint filed by the respondent no.2 is improbable, vague, and an abuse of the process of the law and, therefore, deserves to be quashed by this Court. He submits that the Complaint has been filed belatedly as the parties have been living separately since more than one and a half years before the filing of the Complaint, after the respondent no. 2 willingly left her matrimonial home.

Submissions of the learned counsel for Respondents:

12. The learned counsel for the respondent no. 2 submits that Section 202 of the Cr.P.C. has no application to a Complaint filed under Section 12 of the DV Act, as Section 28 of the DV Act empowers the learned MM to lay down its own procedure for the disposal of an application under Section 12 of the DV Act.

13. He submits that the proceedings under Section 12 of the DV Act are more civil in nature and hence strict compliance to procedures of the Cr.P.C. are not required in such cases. He places reliance on the judgments of the High Court of Madras in *Arul Daniel & Ors. v. Suganya*, 2022 SCC OnLine Mad 5435; and of this Court in *Sirisha Dinavahi Bansal v. Rajiv Bansal*, 2020 SCC OnLine Del 764, in support of his submissions.

14. He submits that the proceedings before the learned MM in the present case are at nascent stage and hence the disputed questions of facts cannot be decided in a petition under Section 482 of the Cr.P.C..



Analysis and Findings:

15. I have considered the submissions made by the learned counsels for the parties.

16. Section 202 of the Cr.P.C. mandates a Magistrate to postpone issue of process against the accused residing at a place beyond the area in which such Magistrate exercises jurisdiction, and instead, either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. Section 202 of the Cr.P.C. is reproduced hereinbelow:

“202. Postponement of issue of process.—(1)
Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:
Provided that no such direction for investigation shall be made,—
(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or
(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.



(2) *In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:*

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) *If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant."*

(Emphasis supplied)

17. In ***Abhijit Pawar*** (supra), the Supreme Court highlighted that the purpose and object behind Section 202 of the Cr.P.C. is to ward off false complaints against persons residing at far-off places and in order to save them from unnecessary harassment. It was held that Section 202 of the Cr.P.C. casts an obligation on the Magistrate to hold an inquiry by examining the witness and satisfying himself that the allegations in the complaint, when considered along with the statements recorded or inquiry conducted thereon, would *prima facie* constitute the offence for which the complaint is filed. It has been further held that non-holding of such an inquiry goes to the jurisdiction of the matter and vitiates the proceedings.

18. With the above prologue, the issue to be determined is whether Section 202 of the Cr.P.C. applies to a Complaint filed under Section 12 of the DV Act or not?

19. In determining the above issue, what is of prime significance in Section 202 of the Cr.P.C. are the words "*complaint of an offence*".



20. Section 2(d) of the Cr.P.C. defines a ‘Complaint’ as under:-

“2. Definitions.—In this Code, unless the context otherwise requires,—

(d) “complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.—A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;”

21. A Complaint is, therefore, the allegation made, orally or in writing, to a Magistrate, with the view to his taking action under the Cr.P.C. that some person has committed an ‘offence’.

22. ‘Offence’, in terms of Section 2(n) of the Cr.P.C., means *inter alia* any act or omission made punishable by any law for the time being in force.

23. Therefore, for determining whether Section 202 of the Cr.P.C. applies to a Complaint filed under Section 12 of the DV Act, the nature of the DV Act and the Application/Complaint filed under Section 12 of the same shall have be considered.

24. In ***Kunapareddy @ Nookala Shanka Balaji v. Kunapareddy Swarna Kumari & Anr.***, (2016) 11 SCC 774, the Supreme Court considered in detail the object of the DV Act and held that merely because Section 28 of the DV Act provides that to the proceedings



under some of the provisions of the said Act, including Sections 18 and 20 of the DV Act, provisions of the Cr.P.C. apply, it cannot detract from the fact that these proceedings are essentially of civil nature. Section 28 of the DV Act provides that the proceedings under the DV Act shall be governed by the provisions of the Cr.P.C., however, the said proceedings are essentially of civil nature, therefore, even an amendment to the complaint can be allowed. Considering the interplay between Sub-section (2) and Sub-section (1) of 28 of the DV Act, the Supreme Court emphasised that Sub-section (2) of Section 28 of the DV Act has been incorporated by the Legislature keeping a definite purpose in mind and the relief that can be granted by the Court, which are basically civil in nature. I may reproduce the relevant observations of the Supreme Court as under:

“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 498-A of the Penal Code, 1860. 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. In order to demonstrate it, we may



reproduce the introduction as well as relevant portions of the Statement of Objects and Reasons of the said Act, as follows:

“Introduction

The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged that domestic violence is undoubtedly a human rights issue. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women in its General Recommendations has recommended that State parties should act to protect women against violence of any kind, especially that occurring within the family. The phenomenon of domestic violence in India is widely prevalent but has remained invisible in the public domain. The civil law does not address this phenomenon in its entirety. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498-A of the Penal Code, 1860. In order 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 the Protection of Women from Domestic Violence Bill was introduced in Parliament.

Statement of Objects and Reasons

- 1. Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of all Forms of Discrimination against Women (Cedaw) in its General Recommendation No. XII (1989) has recommended that State parties*



should act to protect women against violence of any kind especially that occurring within the family.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

4. The Bill, inter alia, seeks to provide for the following—

(ii) It defines the expression “domestic violence” to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who



provide her assistance from the domestic violence.”

13. *Procedure for obtaining order of reliefs is stipulated in Chapter IV of the DV Act which comprises Sections 12 to 29. Under Section 12 an application can be made to the Magistrate by the aggrieved person or Protection Officer or any other person on behalf of the aggrieved person. The Magistrate is empowered, under Section 18, to pass protection order. Section 19 of the DV Act authorises the Magistrate to pass residence order which may include restraining the respondent from dispossessing or disturbing the possession of the aggrieved person or directing the respondent to remove himself from the shared household or even restraining the respondent or his relatives from entering the portion of the shared household in which the aggrieved person resides, etc. Monetary reliefs which can be granted by the Magistrate under Section 20 of the DV Act includes giving of the relief in respect of the loss of earnings, the medical expenses, the loss caused due to destruction, damage or removal of any property from the control of the aggrieved person and the maintenance for the aggrieved person as well as her children, if any. Custody can be decided by the Magistrate which was granted under Section 21 of the DV Act. Section 22 empowers the Magistrate to grant compensation and damages for the injuries, including mental torture and emotional distress, caused by the domestic violence committed by the appellant. All the aforesaid reliefs that can be granted by the Magistrate are of civil nature. Section 23 vests the Magistrate with the power to grant interim ex parte orders. It is, thus, clear that various kinds of reliefs which can be obtained by the aggrieved person are of civil nature. At the same time, when there is a breach of such orders passed by the Magistrate, Section 31 terms such a breach to be a punishable offence.*



14. In the aforesaid scenario, merely because Section 28 of the DV Act provides for that the proceedings under some of the provisions including Sections 18 and 20 are essentially of civil nature. We may take some aid and assistance from the nature of the proceedings filed under Section 125 of the Code. Under the said provision as well, a woman and children can claim maintenance. At the same time these proceedings are treated essentially as of civil nature.

18. In this context, provisions of sub-section (2) of Section 28 of the DV Act gain significance. Whereas proceedings under certain sections of the DV Act as specified in sub-section (1) of Section 28 are to be governed by the Code, the legislature at the same time incorporated the provisions like sub-section (2) as well which empowers the court to lay down its own procedure for disposal of the application under Section 12 or Section 23(2) of the DV Act. This provision has been incorporated by the legislature keeping a definite purpose in mind. Under Section 12, an application can be made to a Magistrate by an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person to claim one or more reliefs under the said Act. Section 23 deals with the power of the Magistrate to grant interim and ex parte orders and sub-section (2) of Section 23 is a special provision carved out in this behalf which is as follows:

“23.(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under Section 18, Section 19, Section 20, Section 21 or, as



the case may be, Section 22 against the respondent.”

21. The reliefs that can be granted by the final order or by an interim order, have already been pointed out above wherein it is noticed that most of these reliefs are of civil nature. If the power to amend the complaint/application, etc. is not read into the aforesaid provision, the very purpose which the Act attempts to subserve itself may be defeated in many cases.

25. In ***Kamatchi v. Lakshmi Narayan***, (2022) 15 SCC 50, the Supreme Court, while considering the question whether Section 468 of the Cr.P.C. would apply to the proceedings under the DV Act, held that for the application of Section 468 of the Cr.P.C. and in terms of Section 31 of the DV Act, the offence is committed only on a breach of an order passed on a complaint under Section 12 of the DV Act, and it is only at that stage that the limitation prescribed under Section 468 of the Cr.P.C. shall apply. Till such time an application is preferred under Section 12 of the DV Act, there is no offence committed in terms of the provisions of the Act. The Supreme Court further held as under:

“19. Let us now consider the applicability of these principles to cases under the Act. The provisions of the Act contemplate filing of an application under Section 12 to initiate the proceedings before the Magistrate concerned. After hearing both sides and after taking into account the material on record, the Magistrate may pass an appropriate order under Section 12 of the Act. It is only the breach of such order which constitutes an offence as is clear from Section 31 of the Act. Thus, if there be any offence committed in terms of the provisions of the Act, the limitation prescribed



under Section 468 of the Code will apply from the date of commission of such offence. By the time an application is preferred under Section 12 of the Act, there is no offence committed in terms of the provisions of the Act and as such there would never be a starting point for limitation from the date of application under Section 12 of the Act. Such a starting point for limitation would arise only and only after there is a breach of an order passed under Section 12 of the Act.

28. 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. Lastly, we deal with the submission based on the decision in Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338. 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 response from the respondent in terms of the statute so that after considering the rival submissions, appropriate order can be issued. Thus, the matter stands on a different footing and the dictum in Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338 would not get attracted at a stage when a notice is issued under Section 12 of the Act.”

26. From the above, it would be apparent that though Sub-section (1) of Section 28 of the DV Act provides that all proceedings under



Sections 12, 18, 19, 20, 21, 22 and 23 and offence under Section 31 of the Act shall be governed by the provisions of the Cr.P.C., the nature of the proceedings are civil in character till it reaches the stage of Section 31 of the DV Act. The Supreme Court has also held that complaints under Section 12 of the DV Act for relief under Sections 18 to 23 of the DV Act are not complaining of an ‘offence’ being committed by the respondent in such complaints. The ‘offence’ is committed when an order passed in such proceedings is violated by the respondent.

27. Section 12 of the DV Act is reproduced hereinbelow:

“12. Application to Magistrate.—(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything



contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.”

(Emphasis supplied)

28. Reading of the above provision would show that it is an ‘application’ which an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person files to initiate the adjudication process under the DV Act.

29. The relief in terms of Sub-section (2) of Section 12 of the DV Act may include a relief for issuance of an order for payment of compensation or damages.

30. The Form of an ‘application’ under Section 12 of the DV Act is prescribed in Rule 6 read with Form II of the Protection of Women from Domestic Violence Rules, 2006 (hereinafter referred to as the ‘Rules’). Though the prayer in Form II is made to the Court to take ‘cognizance of the complaint’, this does not detract from the nature of the proceedings or the nature of the application made, which is primarily civil in nature. It also does not detract from the position that



what is filed under Section 12 of the DV Act is an ‘application’ and not a ‘complaint’.

31. Clause 3 of Form II also shows that the prayers that can be made in such an application are for civil relief like prohibitory orders, mandatory injunctions, monetary reliefs, custody orders, etc., and not for taking cognizance of an offence.

32. Sub-section (4) of Section 12 of the DV Act states that the Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the Court. Sub-section (5) of Section 12 of the DV Act states that the Magistrate shall endeavour to dispose of every application made under Sub-section (1) of Section 12 of the DV Act within a period of sixty days from the date of its first hearing.

33. Similarly, in terms of Section 13 of the DV Act, the Magistrate does not issue ‘summons’ or ‘warrants’ to the respondent but ‘notice’ of the date of hearing, and the opposite party is not an ‘accused’ but a respondent. Section 13 of the DV Act is reproduced hereinbelow:

“13. Service of notice.—(1) A notice of the date of hearing fixed under section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.

(2) A declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any



other person as directed by the Magistrate unless the contrary is proved.”

34. Rule 12 (2)(d) and 12(2)(e) of the Rules also makes provision of Order V of the Civil Procedure Code, 1908, so far as practicable, applicable to the service of notice.

35. Sections 19, 20, 21 and 22 of the DV Act describes the nature of the relief that can be granted by the Court on an application filed under Section 12 of the DV Act, while Section 23 of the DV Act empowers the Court to pass *interim* and *ex parte* orders on such an application. These reliefs, as explained by the Supreme Court in ***Kunapareddy @ Nookala Shanka Balaji*** (supra), are civil in nature.

36. Section 26 of the DV Act states that the relief under Sections 18, 19, 20, 21 and 22 of the DV Act may also be sought in any legal proceedings before a Civil Court, Family Court, or a ‘Criminal Court’.

It is reproduced hereinbelow:

“26. Relief in other suits and legal proceedings.—(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be



bound to inform the Magistrate of the grant of such relief.”

37. Section 27 of the DV Act reads as under:

“27. Jurisdiction.—(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which—

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.”

38. In my view, Section 27 of the DV Act completely negates the submission of the learned counsel for the petitioners *qua* the application of Section 202 of the Cr.P.C. to such proceedings. It states that an application under Section 12 of the DV Act can also be filed where the person aggrieved, permanently or temporarily, resides or carries on business or is employed. Once the jurisdiction of the Court is determined by the place of residence of the Complainant/aggrieved person, Section 202 of the Cr.P.C. can no longer apply, as it would negate the very purpose of vesting jurisdiction in a Court where the Complainant/aggrieved person resides.

39. In this regard, reference also needs to be drawn to Sections 177 to 179 of the Cr.P.C., whereunder the jurisdiction to try an offence is vested in a Court within whose local jurisdiction the ‘offence’ was



committed. Sections 177 to 179 of the Cr.P.C. are reproduced hereinbelow:

“177. Ordinary place of inquiry and trial.—
Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

178. Place of inquiry or trial.—*(a) When it is uncertain in which of several local areas an offence was committed, or*
(b) where an offence is committed partly in one local area and partly in another, or
(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or
(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

179. Offence triable where act is done or consequence ensues.—*When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.”*

40. Section 31 of the DV Act, as has been emphasised by the Supreme Court in ***Kunapareddy @ Nookala Shanka Balaji*** (Supra) and ***Kamatchi*** (Supra), is actually the point where the offence comes to be. Sections 31 and 32 of the DV Act are reproduced as under:

“31. Penalty for breach of protection order by respondent.—*(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act*



and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

32. Cognizance and proof.—*(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.*

(2) Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) of section 31 has been committed by the accused.”

41. A combined reading of the above provisions and the scheme of the Act clearly shows that, at the stage of filing of the application under Section 12 of the DV Act and issuing notice under Section 13 of the DV Act, Section 202 of the Cr.P.C. has no application.

42. Section 190 of the Cr.P.C. states that cognizance of any offence may be taken by the Magistrate of the first class or the Magistrate of the second class specially empowered in this behalf under sub-section (2) of Section 190 of the Cr.P.C., *inter alia* upon receiving of a complaint of facts which constitutes such offence. Chapter XV of the Cr.P.C. provides for pre-requisites for a Magistrate taking cognizance



of an offence on complaint. Therefore, as the application filed under Section 12 of the DV Act is not for an offence, Section 202 of the Cr.P.C. can have no application.

43. I may herein also note that Chapter IX, Section 125 of the Cr.P.C. also empowers a Magistrate of the first class to direct payment of monthly maintenance to the wife or children. Such proceedings are also treated essentially as of civil nature, The Supreme Court in ***Nand Lal Misra v. Kanhaiya Lal Misra***, 1960 SCC OnLine SC 296 has held that the Proceedings under Section 488 of the Cr.P.C., 1898 (which is *pari materia* to Section 125 of the Cr.P.C., 1973) are civil in nature, and hence, Sections 200 to 203 of the Cr.P.C. shall not apply to the said proceedings and no preliminary inquiry is required before issuing of process. I may reproduce the relevant observations of the Supreme Court as under:

“8. The first question is whether Section 488 of the Code contemplates any preliminary enquiry on the part of a Magistrate before he could issue notice to the opposite party. The answer to this question turns upon the construction of the provisions of Section 488 of the Code. Chapter XXXVI of the Code contains three provisions. The heading of the Chapter is “Of the Maintenance of Wives and Children”.

xxxxx

Section 489 provides for the alteration in the allowance under Section 488, and Section 490 prescribes the procedure for the enforcement of the order of maintenance. The relief given under this Chapter is essentially of civil nature. It prescribes a summary procedure for compelling a man to maintain his wife or children. The findings of a Magistrate under this Chapter are not final and the parties can



legitimately agitate their rights in a civil court. This Chapter is a self-contained one. It recognizes the right of a child or wife to claim maintenance. It prescribes the procedure to be followed and provides for the enforcement of the decision of the Magistrate..... It is conceded that Sections 200 to 203 of the Code do not apply to an application under Section 488 of the Code. As the proceedings are of a civil nature, the Code does not contemplate any preliminary enquiry. When the terms are clear, there is no scope for drawing inspiration from other sections of the Code, or for deviating from the procedure prescribed to fill up an alleged lacuna. It is said that if no preliminary enquiry be held, even in a blackmailing action notice will have to go to the respondent. There is nothing incongruous in this position; for, if a suit is filed in a civil court for a decree for maintenance by a child against the alleged putative father, summons will go to him without any preliminary enquiry. We are not impressed by the argument that the sub-section itself is intended only for the benefit of the respondent. It appears to us that notice to the respondent is in the interest of both the applicant as well as the respondent while it enables the respondent to be present when evidence is taken against him, it lightens the burden of the petitioner, for an honest respondent may admit his paternity of the child, if that was a fact and may contest only the quantum of maintenance. We, therefore, hold that Section 488 of the Code does not contemplate a preliminary enquiry before issuing a notice, but lays down that all evidence under that Chapter should be taken in the presence of the respondent or his pleader, indicating thereby that one enquiry only should be held after notice.

(Emphasis Supplied)



44. As far as the judgments relied upon by the learned counsel for the petitioners are concerned, in *Ushaben Kishorbhai Mistry* (Supra), the High Court of Gujarat was considering the maintainability of a petition under Section 482 of the Cr.P.C. for quashing of a complaint that is filed by an aggrieved person under Section 12 of the DV Act. The Court was not considering the question of application of Section 202 of the Cr.P.C. to such proceedings.

45. In *Nandkishor Pralhad Vyawahare* (Supra), the High Court of Bombay while holding that the proceedings under the DV Act are predominantly civil in nature, and it is only when there is a breach of the protection order as is contemplated under Section 31 of the DV Act and failure or refusal to discharge duty without any sufficient cause by the Protection Officer as contemplated under Section 33 of the DV Act, the proceedings assume the character of criminality, the Bombay High Court held that Section 482 of the Cr.P.C. shall be applicable to such proceedings but did not analyse the application of Section 202 of the Cr.P.C. on the DV Act.

46. In *Baiju & Anr.* (Supra), the High Court of Kerala has held that against an order passed under Section 29 of the DV Act, a revision under Section 397(1) read with Section 401 of the Cr.P.C. can be maintainable, but therein also, the High Court of Kerala did not consider the issue of the application of Section 202 of the Cr.P.C. on the DV Act.

47. In *Chaitanya Singhania* (Supra), the High Court of Calcutta held that in spite of availability of alternate remedy in form of an appeal under Section 29 of the DV Act and provision under Section



397 read with Section 401 of the Cr.P.C., challenge to a complaint filed under Section 12 of the DV Act, can also be laid under Section 482 of the Cr.P.C.. The same has also been held by the High Court of Karnataka in *Mareppa* (Supra).

48. The above judgments, therefore, do not deal with the issue as raised in the present case, that is, whether Section 202 of the Cr.P.C. would be applicable to an application filed under Section 12 of the DV Act. They, therefore, do not come to the aid of the petitioners.

49. The submission of the learned counsel for the petitioners that the complaint filed by the respondent no.2 is improbable, vague or an abuse of a process of law, are issues which are to be determined by the learned Metropolitan Magistrate/Trial Court on considering the say of the petitioners herein. These cannot be considered at this stage. It is settled law that the High Court cannot enter into disputed questions of fact while exercising its powers under Section 482 of the Cr.P.C. At this stage, it is suffice to say that from the reading of the complaint, it cannot be said at this stage that no cause of action for filing the same is made out or any ground which would allow this Court to quash the complaint at the initial stage itself has been made out by the petitioners.

50. In view of the above, while holding that Section 202 of the Cr.P.C. shall have no application to an application/complaint filed under Section 12 of the DV Act, I find no merit in the present petition. The same stands dismissed. The pending application also stands disposed of as infructuous. There shall be no order as to costs.



2024:DHC:4863



51. Needless to say that this Court has not expressed any opinion on the merits of the Complaint and any observation made hereinabove shall not, in any manner, prejudice the petitioners in their defence in the Complaint before the learned MM.

NAVIN CHAWLA, J

JULY 02, 2024/ns/VS

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
By: SUNIL
Signing Date: 03.07.2024
15:45:49

CRL.M.C. 2438/2022

Page 26 of 26