



2024:DHC:6042



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 01st August, 2024*+ **CRL.REV.P. 690/2023, CRL.M.A. 16860/2023,
CRL.M.A. 5338/2024, CRL.M.A. 6663/2024 &
CRL.M.A. 13102/2024**

DR. SANJAY GUPTAPetitioner
Through: Mr. Abhishek Swarup,
Advocate.

versus

DR. RICHA CHANDRARespondent
Through: Ms. Sunita Arora,
Advocate (DHCLSC)
alongwith Respondent-in-
Person.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. The present petition is filed under Section 397 of the Code of Criminal Procedure, 1973 ('CrPC') challenging the judgment dated 18.03.2023 (hereafter '**impugned judgment**'), passed by the learned Principal District & Sessions Judge ('PDSJ'), Karkardooma Courts, Delhi in C.A. No. 65/2022 titled as '*Sanjay Gupta v. Richa Chandra*'.

2. The learned PDSJ, by the impugned judgment, dismissed the petitioner's appeal against the order dated 09.10.2020, passed by the learned Metropolitan Magistrate ('MM'), Mahila Court, Shahdara District, KKD Courts, Delhi in Ct. No 2181, whereby,

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the learned Trial Court issued summons to the petitioner in an application filed under Section 12 of the Domestic Violence Act ('DV Act').

3. The learned PDSJ noted that along with the appeal against the Trial Court's Order, the petitioner had also preferred an application under Section 5 of the Limitation Act seeking condonation of delay of 62 days in filing of the appeal. The learned PDSJ dismissed the appeal on two grounds. *first*, the petitioner had failed to disclose any reasonable grounds for the condonation of delay. *Second*, even on the merits of the appeal, the learned PDSJ observed that a bare perusal of the learned Trial Court's order showcases that the learned Trial Court considered the specific allegations made by the respondent in the domestic violence complainant. Hence, it cannot be alleged that the learned Trial Court's order was without application of mind.

4. The learned counsel for the petitioner submits that the learned PDSJ did not deal with any of the grounds raised by the petitioner in the appeal.

5. He submits that the learned Trial Court has not taken any steps to satisfy itself that any incidence of violence has taken place.

6. He submits that the respondent's domestic violence complaint shows that no incidence of violence can be made out.

7. *Per contra*, the learned counsel for the Respondent submits that the learned Trial Court took into consideration the incidents of domestic violence as well as the conduct of the



petitioner and applied its mind while dismissing the application on condonation of delay and on merits.

8. Heard the learned counsel for the parties and perused the record.

9. The relevant part of the impugned judgment is reproduced below:

“10. From a bare perusal of this order, it is clear that the learned Trial Court has mentioned ‘considering the specific allegation made in the petition by the petitioner let summons be issued to respondent no.1 (husband)’. From this line it is clear that learned Trial Court has considered the specific allegations made by the complainant in her D.V. complaint hence it cannot be said at this stage that the order was passed by the learned Trial Court without application of mind.”

“11. In view of my above discussion, I find no justification for allowing the application for condonation of delay. The appeal as filed is liable to be rejected, being filed beyond the period of limitation and even on merits the appeal is not maintainable as the learned Trial Court has considered the allegations and only after considering the allegations in the complaint, has ordered to issue summons to the respondent no.1 i.e., present appellant. This appeal is accordingly dismissed.”

10. It is settled position of law that while issuing summons to the accused the concerned Court has to be *prima facie* satisfied of the charges alleged against the accused. The Hon’ble Supreme Court in ***Pepsi Foods Ltd. v. Special Judicial Magistrate & Ors*** : AIR 1998 SCC 128 has observed as under: -

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is



not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

11. It can, therefore, be reasonably inferred that while issuing summons, a *prima facie* appreciation of evidence coupled with application of judicial mind needs to be carried out for a summoning order to be just and legal.

12. In the present matter, the PDSJ as well as the learned MM were to examine whether the nature of allegations *prima facie* met with the very basic tenets and ingredients of provision under Section 12 of the DV.

13. The learned PDSJ while dismissing the appeal against the order passed by the learned Trial Court on 09.10.2020 noted that the petitioner had already approached the Hon'ble High Court of Delhi for stay and quashing of the proceedings arising out of the complaint bear CC No.2181 of 2020 filed by the respondent which had already been dismissed by this court vide order dated 07.10.2021. The learned PDSJ also noted that the petitioner had also preferred an SLP (Crl.) No.3770 of 2022 before the Hon'ble Supreme Court which was also dismissed on 22.04.2022.

14. The learned PDSJ noted that only after approaching the Delhi High Court and Supreme Court was the appeal preferred before the learned PDSJ, who while dismissing the application noted that there was no explanation behind why there was a 62 day delay in the filing of the criminal appeal. Further, the learned



PDSJ observed that a bare perusal of the Trial Court's order showcases that specific allegations were made by the respondent in her domestic violence complaint and the order passed by the learned Trial Court cannot be said to be without application of mind.

15. A bare perusal of the complaint dated 01.10.2020 filed by the petitioner under Section 22 of the DV Act showcases specific allegations have been made regarding physical torture and harassment faced by the respondent including the allegation of her being turned away from her matrimonial home.

16. It is not denied by the petitioner that the respondent is taking care of their two minor children, a 17 year old daughter and a 13 year old son. It is alleged by the respondent that the petitioner has not contributed to their costs and the respondent herein is bearing all their expenses including school fees, coaching fees, tuition fees etc.

17. It is also alleged by the respondent that the only person dependent upon the petitioner is the respondent and their children.

18. It is trite law that not providing any maintenance to the wife is a form of 'economic abuse' under the DV Act, Section 3(iv) defines economic abuse as:

"economic abuse" includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house



hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.”

19. A coordinate bench of this court in **Ajay Kumar v. Uma:** **2024:DHC:80** further made observation regarding the scope of the word ‘Domestic Violence’, the same has been reproduced below:

“The ‘domestic relationship’ between the petitioner and complainant is not disputed. ‘Domestic violence’ may be by physical harm or injury endangering the health safety, life, limb, or ‘well being’ which may be mental or physical of ‘aggrieved person’. Further the same includes physical, sexual, verbal, ‘emotional’ and ‘economic’ abuse. The object of the Act is to provide for more effective provisions to safeguard the rights of the women who are victims of violence of any kind occurring within the family, and for matters connected therewith or incidentally thereof.”

20. It is clear that domestic violence also includes economic abuse. DV Act has defined economic abuse as deprivation of all or any economic or financial resources to which the aggrieved person is entitled to under any law and also includes household necessities for the aggrieved person and her children.

21. The respondent in her complaint has alleged instances of physical and mental torture. Moreover, specific allegations have been made regarding non-payment of any money towards the maintenance of the respondent and their minor kids, who reside



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with the respondent. The veracity of the complaint filed by the respondent and the allegations therein is a matter of trial and cannot be looked into by this Court at this stage.

22. The learned PDSJ clearly applied her mind in correctly observing that there was no infirmity with the learned MM's order and that on a *prima facie* perusal of the complaint serious allegations of domestic violence have been made out.

23. The Court also observed that the petitioner had already approached this Court for the setting aside of the proceedings on an earlier date and had also preferred a SLP before the learned Supreme Court which was dismissed. This type of vexatious litigation often wastes the limited time which is at the disposal of courts and causes unnecessary expenditure of resources for everyone involved.

24. Thus, in view of the aforesaid discussion, this Court finds no reason to interfere with the impugned order.

25. Hence, the present petition is dismissed with the cost of ₹50,000.

AMIT MAHAJAN, J

AUGUST 1, 2024

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