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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 05.01.2024

+ CRL.M.C. 2677/2021 & CRL.M.A. 17165/2021

AJAY KUMAR

..... Petitioner

Through: Mr.Dhananjay Singh Sehrawat,
Advocate with petitioner in person.

versus

UMA

..... Respondent

Through: Mr.Digvijay, Advocate

CORAM:**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

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J U D G M E N T**ANOOP KUMAR MENDIRATTA, J (ORAL)**

1. Petition has been preferred under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') by the petitioner for quashing of Complaint Case No.1852/2021 and proceedings emanating therefrom, as well as quashing/modification of order dated 15.09.2021 passed by learned MM, Tis Hazari Courts whereby in an application for interim maintenance under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'DV Act'), the petitioner was directed to pay a sum of Rs.6000/- per month to the complainant/respondent towards rent alongwith interim maintenance of Rs.11,460/- per month to the complainant and a sum of Rs.9,800/- towards the expenditure of both minor daughters in terms of paragraphs 14 and 15 as under:



“14. Hence, it is ordered that respondent shall pay a sum of Rs. 6,000/- per month to the complainant towards rent, which is the rent to be paid for alternative accommodation, as arranged by the complainant, as per rent agreement annexed. The amount of rent @ Rs. 6,000/- per shall be payable from the date of execution of new rent agreement i.e. 23.08.2021 till the disposal of petition under section 12 D.V. Act. The earlier rent as paid towards previous rent agreement is however not subject to adjustment.

15. The respondent no. 1 is further directed to pay Rs. 9,800/- to the complainant towards the expenditure of both minor daughters and Rs. 11,460/- per month to the complainant towards her interim maintenance. The said amount shall be payable from the date of filing of the petition till the disposal of the present petition or till they are legally entitled to receive the same, whichever is earlier. The respondent is directed to pay the said amount by the 7th of each calendar month. The respondent is directed to clear the arrears of said maintenance within 06 months.”

2. As per the case of the petitioner, the marriage between the parties was solemnized according to Hindu rites and ceremonies on 31.05.2010 at Delhi. On 04.05.2011 and 05.03.2014, the couple was blessed with daughters. A loan had to be taken up by the petitioner for a sum of Rs.5,00,000/- from bank on 03.11.2018 for the purpose of treatment of the respondent/complainant since she had developed some medical complications. Another loan was further obtained for a sum of Rs.2,00,000/- on 10.06.2019 and the petitioner has been paying Equal Monthly Instalments (‘EMIs’, for short) for the same. In December, 2020, petitioner who is working as a Head Constable in Delhi Police developed some doubt over activities of the respondent/complainant and it was found that she had illicit relationship with his elder brother, *Vinay Kumar*, for four years as well as



with one *Rahul* and *Anuj*. He also alleged that the respondent had planned a hoax case of theft at home of her jewellery which she had handed over to *Vinay Kumar* during their illicit relationship. An FIR No.301/2018 regarding theft was lodged at P.S. Khajoori Khas,

3. It is further the case of the petitioner that his cousin namely, *Priya*, confessed to him in July, 2021 that the respondent on 09.09.2020 on a false pretext took her to Hotel Signature, Gali No.6, Gopalpur Road, Delhi where two men, namely, *Rahul* and *Anuj* were already present. The respondent/complainant on the basis of Aadhar Card of *Priya* got entry in the Hotel and after taking some money from *Rahul*, asked *Priya* to go alongwith *Rahul*. On entering the room she was sexually molested by *Rahul* but managed to escape. *Priya* was further threatened by the respondent/complainant that in case she disclosed about the incident, she would be defamed. A similar incident is stated to have been repeated on 11.12.2020 by the respondent.

4. In the aforesaid background, the petitioner is claimed to have left his residential premises and sold the property. Further, a flat was rented out in Dwarka, nearby the place of working of the respondent. Petitioner also took a property on rent at Dayalpur, Delhi wherein he started to reside separately with his mother and cousin (sister) and thereafter shifted to Pandav Nagar. The complaint case is stated to have been filed by complainant under DV Act despite the fact that the petitioner had been maintaining the respondent alongwith children. A divorce case is also stated to have been filed by the petitioner under Section 13(1) (i) & (ia) of HMA Act.

5. It is further the case of petitioner that *prima facie* there is no case of 'domestic violence'. Also the learned MM is stated to have not called for



DIR which is mandatory under Section 12 of the DV Act, while passing interim orders.

6. On the other hand, in reply filed on behalf of the respondent/complainant, it was submitted that the cognizance had been taken after filing of the *Domestic Incident Report* ('DIR') which was called vide order dated 31.07.2021. The DIR is stated to have been filed on 03.08.2021 and as such the stand taken by the petitioner is vehemently contested. It is further pointed out that the petitioner who is working in Delhi Police got registered an FIR No.301/2018 under Section 380 IPC after dowry articles of the respondent were misplaced/stolen. Another FIR No.374/2021 under the provisions of Immoral Trafficking Act alongwith other sections is stated to have been filed on false and frivolous grounds, by taking undue advantage of post of petitioner in Delhi Police. The accused persons are stated to have been granted an interim relief, on an application for anticipatory bail. A complaint is also stated to have been filed by the respondent on 19.07.2021, which is stated to be pending consideration.

7. It is further the case of the respondent that petitioner has been trying to implicate her in false criminal cases in order to settle the matter at a meagre amount. The complaint is stated to have been lodged by the niece of the petitioner on 22.09.2021 only after the petition was filed by the petitioner on 20.07.2021 much prior to the said complaint. It is denied that the respondent at any point of time was employed in coaching centre or that she suffered from any major medical issue which required expenditure of Rs.7,00,000/- as claimed by the petitioner. The learned trial court is stated to have passed an order for payment of Rs.27,260/- per month for maintenance after duly considering the income and assets affidavit and documents on record and



bank balance of Rs.32,73,693/- in account of petitioner.

8. In the rejoinder filed on behalf of the petitioner, the stand taken in the petition was reiterated.

9. The order passed by learned Trial Court as well as proceedings initiated under the DV Act have been challenged by the learned counsel for the petitioner primarily on the ground that *prima facie* domestic violence is not disclosed on the basis of allegations in complaint. Secondly, it is urged that DIR was not called/considered by the learned MM, which is mandatory under Section 12 of the DV Act. The power to grant interim maintenance under Section 23 of the DV Act is also disputed and order on maintenance is also challenged. Reliance is further placed upon ***Ravi Dutta v. Kiran Dutta & Anr., 2018 (2014) DLT 61*** wherein learned Single Judge of this Court held that Section 12 of DV Act mandates that before passing any order on such an application DIR has to be taken into consideration and when impugned order for maintenance was passed by trial court therein DIR was still awaited. As such the impugned order remanding the matter back to the trial court to aforesaid extent was upheld.

10. On the other hand, learned counsel for the respondent supports the order passed by the learned trial court and submits that in the present case the impugned order of maintenance is stated to have been passed after giving due opportunity to the parties. DIR was duly called for by learned MM after filing of complaint by the respondent. The requirement of considering DIR at the stage of filing of petition under Section 12 of the DV Act for passing of interim orders is strongly disputed, relying upon ***Prabha Tyagi v. Kamlesh Devi, Crl. Appeal No.511/2022 decided on 22.05.2022. (Supreme Court)***. Further 'domestic violence' is stated to be apparent on the face of complaint



since respondent was economically abused.

11. Sub-section (1) of Section 12 of the DV Act provides that 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 the DV Act. Proviso to Sub-section (1) of Section 12 further lays down that before passing any order on such application, the Magistrate shall take into consideration any DIR received by him from the Protection Officer or the Service Provider.

12. As per Section 2(a) of the DV Act “**aggrieved person**” means any woman who is, or has been, in a ‘domestic relationship’ with the respondent and who alleges to have been **subjected to any act of ‘domestic violence by the respondent’**; As per Section 2(f), “**domestic relationship**” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

Further, ‘domestic violence’ under Section 3 of the DV Act means any act, omission or commission or conduct of the respondent shall constitute ‘domestic violence’ in case it:

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or



clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.--For the purposes of this section,--

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes--

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested;

(iv) "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.



Explanation II.--For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

13. An “aggrieved person” under DV Act may seek protection orders under Section 18; residence orders under Section 19, monetary reliefs under Section 20; custody orders under Section 21 and compensation orders under Section 22 of the Act.

Sub-section (1) of Section 20 of the DV Act deals with monetary reliefs which provides that while disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to:

- (a) the loss of earnings;
- (b) the medical expenses;
- (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
- (d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.**

Further in terms of Sub-section 2, the monetary relief granted under Section 20 shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.



14. 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.

On the face of record, the respondent appears to have been left in lurch by the petitioner by disposing the properties and shifting to rented accommodation without making any provision for maintenance of respondent and children. *Prima facie*, the acts and conduct of the respondent constitute 'domestic violence' as the respondent/complainant appears to have been deprived of the economic and financial resources to which she is entitled under law. Also disposal of the household effects to which respondent had an interest and was entitled to use by virtue of domestic relationship brings the case within the ambit of '**economic abuse**' as provided in Section 3 of DV Act. It cannot be ignored that allegations of illicit relationship and relevant FIR under the provisions of Immoral Trafficking Act, as alleged by the petitioner was belatedly lodged, after the proceedings were initiated by the respondent under the DV Act. The respondent cannot be denied the benefit of interim maintenance under the DV Act merely on the basis of allegations of illicit relationship which are yet to be proved during the course of trial.

15. The issue whether consideration of DIR (Domestic Incident Report) is mandatory before initiating proceedings under the DV Act, in order to



invoke substantive provisions of Sections 18 to 20 and 22 of the DV Act came up for consideration before Hon'ble Supreme Court in ***Prabha Tyagi v. Kamlesh Devi*** (supra) wherein the difference of opinion expressed by different High Courts on the issue was noticed. Hon'ble Apex Court observed that on a conjoint reading of the provisions of the DV Act, an 'aggrieved person' on her own or any other person on behalf of the aggrieved person may represent an application before the Magistrate seeking one or more reliefs under the DV Act. However, in terms of the proviso, when a DIR is received by the Magistrate from the Protection Officer or Service Provider, in such a case, same shall be taken into consideration. As such, when an aggrieved person files an application herself or with the assistance of an Advocate and not with the assistance of a Protection Officer or Service Provider, in such a case, the role of Protection Officer or Service Provider is not envisaged. As such, it was held that the expression "shall" used in proviso to Section 12(1) of the DV Act is restricted only to those cases where a Protection Officer files any DIR or, as the case may be, Service Provider files such a report. Consequently, when a DIR is filed by a Protection Officer or Service Provider, in such a case, the Magistrate has to take into consideration the said report received by him. However, if such report has not been filed on behalf of the aggrieved person then he is not bound to consider any such report. Accordingly, it was concluded that High Court was not right in holding that the Magistrate had no authority to issue any directions in favour of the appellant under proviso to Sub-Section (1) of Section 12 of the DV Act since the application filed by the appellant therein was not accompanied by a DIR. Diversion of opinion between different High Courts was accordingly settled as observed in paragraph 49 as under:



“49. On an analysis of the aforesaid judgments from various High Courts, we find that the High Courts of Andhra Pradesh, Bombay, Delhi, Gauhati, Himachal Pradesh, Jammu & Kashmir, Karnataka, and Madhya Pradesh, are right in holding that if Domestic Incident Report has been received by the Magistrate either from the Protection Officer or the service provider then it becomes obligatory on the part of the Magistrate to take note of the said report before passing an order on the application filed by the aggrieved party, but if no complaint or application of domestic violence is received by the Magistrate from the Protection Officer or the service provider, the question of considering such a report does not arise at all. As already discussed, the D.V. Act does not make it mandatory for an aggrieved person to make an application before a Magistrate only through the Protection Officer or a service provider. An aggrieved person can directly make an application to the jurisdictional Magistrate by herself or by engaging the services of an Advocate. In such a case, the filing of a Domestic Incident Report by a Protection Officer or service provider does not arise. In such circumstances, it cannot be held that the Magistrate is not empowered to make any order interim or final, under the provisions of the D.V. Act, granting reliefs to the aggrieved persons. The Magistrate can take cognizance of the complaint or application filed by the aggrieved person and issue notice to the respondent under Section 12 of the D.V. Act even in the absence of Domestic Incident Report under Rule 5. Thus, the Magistrate has jurisdiction to take cognizance of the complaint under Section 12 of the D.V. Act in the absence of a Domestic Incident Report under Rule 5 when the complaint is not filed on behalf of the aggrieved person through a Protection Officer or service provider. Such a purposeful interpretation has to be given bearing in mind the fact that the immediate relief would have to be given to an aggrieved person and hence the proviso cannot be interpreted in a manner which would be contrary to the object of the D.V. Act which renders Section 12 bereft of its object and purpose.”

The conclusion in paragraph 52(i) may be further beneficially quoted:

“52. In view of the above discussion, the three questions raised



in this appeal as answered as under:

(i) Whether the consideration of Domestic Incident Report is mandatory before initiating the proceedings under Domestic Violence Act, 2005 in order to invoke substantive provisions of Sections 18 to 20 and 22 of the said Act. It is held that Section 12 does not make it mandatory for a Magistrate to consider a Domestic Incident Report filed by a Protection Officer or service provider before passing any order under the DV Act. It is clarified that even the balance of a Domestic Incident Report, a Magistrate is empowered to pass both ex-parte or interim as well as a final order under the provisions of the DV Act.”

16. Reverting back to the facts of the case, it may be noticed that vide order dated 31.07.2021, the complaint under Section 12 of the DV Act preferred by the respondent was registered and it was observed that there are clear allegations, as to the ‘domestic violence’ inflicted upon the complainant by the respondent No.1. Also DIR was called through the Protection Officer for the next date of hearing i.e. 03.08.2021. The order dated 09.08.2021 passed by learned MM further takes into consideration the DIR and takes note of the fact that the respondent had shifted to her rented accommodation with the complainant and her minor daughters and thereafter left the complainant and also stopped paying rent of the premises. It was further observed that the respondent had appeared once but thereafter neither the respondent nor his counsel appeared and also failed to file reply. In the aforesaid circumstances, vide order dated 09.08.2021 the respondent was observed to have committed economic violence upon the complainant and was directed to pay rent of Rs.6,500/- per month to the complainant from May, 2021 till further orders by depositing the same into her bank account and also clear the arrears of the said amount within a month. The complainant was thereafter directed to file income and assets affidavit in



terms of ***Rajneesh v. Neha, (2021) 2 SCC 324*** for consideration of the arguments on interim maintenance application. Finally, impugned order on interim maintenance was passed on 15.09.2021.

On the face of record, since the complaint under Section 12 of the DV Act was filed by the respondent on her own through counsel, there could not have been any occasion for filing the DIR by the Protection Officer or Service Provider at the said stage. However, the same was duly called for by the learned MM vide order dated 31.07.2021 and is duly reflected to have been considered while passing the interim direction for payment of rent and clearance of arrears. In the facts and circumstances, reliance placed upon ***Ravi Dutta v. Kiran Dutta & Anr.***(supra) by the learned counsel for the petitioner which already stands overruled in ***Prabha Tyagi v. Kamlesh Devi*** (supra) is misplaced. The DIR appears to have been duly considered by the learned trial court though reference of the same has not been made in specific in the impugned order dated 15.09.2021.

On the face of record, the contentions raised by the petitioner for quashing of the proceedings under Section 12 of the DV Act are without any merit.

17. Even on the point of maintenance, learned MM had duly noted the fact that monthly income of the petitioner is about Rs.57,300/- and the petitioner had also a bank balance of Rs.32,73,693/- out of which the loan obtained by the petitioner could be repaid. Further after taking into consideration the income and assets affidavit, the learned trial court had noticed that the respondent does not have any source of income for maintenance for herself and for her daughters.

In the facts and circumstances, there are no cogent reasons for



interfering in the impugned order of maintenance passed by the learned trial court. Petition is accordingly dismissed. No order as to costs. Pending application, if any, also stands disposed of.

ANOOP KUMAR MENDIRATTA, J.

JANUARY 5, 2024/v