



2024:DHC: 824



\$~90

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

Date of decision: 05.02.2024

+ CRL.REV.P. 169/2024
DR. SENTHIL KUMAR DHARMAN Petitioner
Through: Ms.Kanack Pandey, Adv.

versus

S. THANGALAKHSMI Respondent
Through: Mr.Kartik Malhotra, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CRL.M.A. 3671-72/2024 (Exemptions)

1. Allowed, subject to all just exception.

CRL.M.A. 3673/2024

2. For the reasons stated in the application, the delay of 15 days in filing is condoned.

3. The application is disposed of.

CRL.REV.P. 169/2024

4. This petition has been filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (in short, 'CrPC') challenging the order dated 11.09.2023 passed by the learned Additional Sessions Judge/Special Judge (NDPS Act), North West, Rohini Courts, New Delhi in appeal No.CA/2/2023, titled *S. Thangalakshmi v. Dr.Senthil Kumar Dharman*, by which the learned



2024:DHC:824



Additional Sessions Judge has been pleased to allow the appeal against the order dated 23.05.2022 passed by the learned Metropolitan Magistrate (Mahila Court-02), North-West District, Rohini Courts, New Delhi in Complaint Case No.6239/2021, titled ***S. Thangalakshmi v Dr.Senthil Kumar Dharman.***

5. The parties herein are husband and wife.
6. The respondent had filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short, 'DV Act') against the petitioner herein, bearing no. COMA/174/2020, before the Court of the learned Judicial Magistrate 1st Class in Sonipat, Haryana. The parties in the course of those proceedings entered into a settlement and executed a Settlement Agreement dated 02.04.2021. Based on the settlement, the respondent withdrew her complaint on 05.04.2021. The respondent then filed another complaint, being CC No.6239/2021, under Section 12 of the DV Act before the Court of the learned Metropolitan Magistrate, North West, Rohini, *inter-alia* claiming that the petitioner had not only violated the terms of the settlement, but has also continued with his acts of domestic violence. In support, she had placed reliance *inter-alia* on certain emails that were addressed by the petitioner to the respondent post settlement.
7. The learned Metropolitan Magistrate, vide order dated 23.05.2022, dismissed the said petition observing therein that in case there is violation of the mediation settlement, the appropriate remedy for the respondent would be to approach the Court before which the settlement had been arrived at between the parties. I may quote the



2024:DHC:824



observation of the learned Metropolitan Magistrate, as under:

“8. A careful perusal of the present petition and the petition preferred before the District Court Sonapat reveals that the allegations levelled against the respondent herein are verbatim and no new cause of action after arriving the settlement between the parties has been indicated by the petitioner. The same could not have been anticipated at the time of issuing notice to the respondent vide order dated 08.09.2021, however at this stage upon comparison of the petition preferred by the petitioner herein as well as that preferred before the District Court Sonapat reveals that the same set of allegations were presented before the District Court Sonapat thereafter as submitted by the petitioner herself that the matter was settled. On page 33 of the petition she has stated that respondent started verbally abusing her over phone and sent email with derogatory and filthy allegations, however she has not substantiated the same neither the said allegation of she being verbally abused contains the specification as to the date and time. Thereafter she has pleaded that the respondent has sent her emails. Page 60 to 62 of the petition deals with the emails dated 04.07.2020 which are pertaining to the period prior to the settlement agreement. Thereafter petitioner has annexed screenshots of emails (without any certificate U/s 65 of IEA 1872) there are emails dated 05.06.2021 and 09.05.2021 as well as 14.05.2021 which reveals the conversation between the complainant and the respondent wherein alleged violation of the mediation settlement agreement has been stated. However, for the violation of the said mediation settlement the appropriate remedy would be to approach the said court itself as the violation of the mediation settlement agreement and to remain bound by the terms of the same was agreed before the District Court Sonapat itself. Furthermore the petitioner is stated to be



2024:DHC:824



residing in Sonapat itself as clearly reflected from the petition and the reason for filing of second round of litigation before this court is not understandable. Hence the case of the petition is not maintainable before this court as no fresh cause of action apparently seems to exist.”

8. Aggrieved of the same, the petitioner challenged the same by way of an appeal before the learned Additional Sessions Judge. The learned Additional Sessions Judge, by the Impugned Judgment dated 11.09.2023, has been pleased to accept the appeal and restore the complaint filed by the respondent, by observing as under:

“10. Right to file DV petition is a statutory right which cannot be taken away by any compromise be it made in any mediation proceedings or outside. In this case admittedly the appellant was residing at Sonapat when she had compromised the DV petition there. Terms of compromise were very clear that the respondent will not cause any further violence, physical as well as emotional on the appellant. Despite that there are several mails filed on record sent by respondent to the appellant, calling her names, insulting her, abusing her and questioning her character. The appellant and respondent are not divorced. Therefore, all these abuses which have caused mental trauma to the appellant are the domestic violence. Ld. MM, however, dismissed the petition not because there was no violence but she failed to understand the reasons for filing second round of petition before this Court and not before Sonapat Court where she could have revived her previous petition.

11. The jurisdiction, under Section 27(1)(b), for filing the DV petition is also at a place where the respondent resides or carries on business or is employed. Admittedly the respondent was working under the jurisdiction of ld. Trial Court at the time when petition was



2024:DHC:824



filed. Therefore, when the statute has provided multiple jurisdiction to file DV petition, it is not for the Court to dictate where the appellant should approach. It is not for the Court to advice what is appropriate for the appellant in making a choice of jurisdiction, like ld. Trial Court did in this case. Therefore, the order of ld. Trial Court is not sustainable and is set aside.”

9. The learned counsel for the petitioner submits that the learned Metropolitan Magistrate had rightly dismissed the complaint observing that in case there is a violation of the terms of the settlement, the remedy of the respondent is to approach the Court at Sonipat rather than filing of a fresh complaint. She submits that in any case, the Settlement Agreement itself has been obtained by practicing fraud by the respondent, and these issues are best left to be determined by the Court at Sonipat.

10. On the other hand, the learned counsel for the respondent submits that in the complaint, cause of action post entering into the settlement has been pleaded by the respondent. He submits that the proceedings before the Court at Sonipat cannot act as *res judicata* or, in any manner, bar the respondent from maintaining the complaint on the subsequent cause of action.

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

12. A bare perusal of the complaint filed by the respondent would show that apart from pleading that there was a mediated settlement arrived at between the parties in Court at Sonipat pursuant to which the respondent had withdrawn her complaint from the said Court, it



2024:DHC:824



further pleaded the conduct of the petitioner post such settlement. The respondent was, therefore, pleading fresh cause of action to maintain her complaint, apart from previous conduct of the petitioner herein. In such scenario, the learned Metropolitan Magistrate had clearly erred in dismissing the complaint by observing that the remedy of the petitioner was to approach a Court at Sonipat. It is relevant to note that the Court at Sonipat has not adjudicated on the complaint of the respondent but the respondent had withdrawn the same based on the settlement arrived at between the parties.

13. In my view, therefore, no fault can be found in the Impugned Judgement, which had set aside the Order passed by the learned Metropolitan Magistrate and restored the Complaint Case filed by the respondent herein.

14. The present petition is accordingly dismissed.

15. There shall be no order as to costs.

NAVIN CHAWLA, J

FEBRUARY 5, 2024/Arya/RP

Click here to check corrigendum, if any