2026:HHC:14019

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CMPMO No. 1/2024
Reserved on: 09.04.2024
Decided on: 27.04.2026

Prashant Kumar .....Petitioner

Versus

Ms. Archana Kalyan ....Respondent

Coram:

The Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. Aditya Thakur, Advocate.

For the Respondent: Ms. Devyani Sharma, Sr. Advocate with Ms. Soma Thakur, Advocate.

Romesh Verma, Judge

The present petition arises out of order, dated 17.08.2019, as passed by the learned Additional Chief Judicial Magistrate, Nalagarh, District Solan, whereby an application filed by the present respondent-wife for execution of order dated, 17.06.2011, passed in case No. 184/3 of 2010, titled as Archana Kalyan vs. Parshant Kumar under Section 12 of the

[1]Whether reporters of the local papers may be allowed to see the judgment? Yes.

Protection of Women from Domestic Violence Act (for brevity, "the Act"), has been allowed.

2 Brief facts of the case are that the present respondent-wife had preferred an application under Section 12 of the Act in the Court of Judicial Magistrate, 1st Class, Court No.1, Nalagarh, District Solan on 20.09.2010 on the ground that she was being physically and mentally harassed by the respondent-husband and his family members (mother-in-law and sisters-in-law) for giving birth to a daughter with the taunt that she belongs to a poor family. She was compelled to leave the shared household. Therefore, she sought protection under the Act prohibiting the petitioner-husband and his family members from interfering in any manner in her life and also sought for custody order of her minor child.

3 The aforesaid application came to be allowed by learned Judicial Magistrate, 1st Class, Court No.1, Nalagarh, vide order dated 17.6.2011, operative portion whereof reads as under:-

> *"In view of my findings on all points supra, the present application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 is hereby allowed. The applicant held entitled for protection orders whereby the*

respondents prohibiting from committing any domestic violence or aiding or abetting in the commission of acts of the domestic violence against the applicant and her child. The respondents are also prohibiting from humiliating, demeaning her in any way. Further under Section 19 of this Act, I hereby pass the residence order directing the respondent for paying monthly rent of the accommodation where the applicant was residing with her child. He was also liable to pay electricity charges and water charges of the rented accommodation of the applicant. Further, the SHO Incharge of police station, Nalagarh is directed to implement this order of the Court for returning of stridhan of the applicant which includes one golden necklace and jhumke to the applicant. The applicant is entitled for rent and electricity charges and water charges from the date she has been evicted from the shared house hold on the name of her mother-in-law, Pamila. Under Section 20 of this Act, the applicant and her child were entitled for maintenance @Rs. 10,000/- per month and Rs.8000/- per month for applicant and Rs.2,000/- per month for her child from the date of filing of this application. Under Section 21 of this Act, the applicant was entitled to the custody of her child namely Ruchita. Under Section 22 of this Act, the applicant was entitled for compensation order i.e. compensation and damages in the sum of Rs.50,000/- for mental torture and emotional distress, she has undergone due to the act of domestic violence committed by the respondents. The Protection Officer and SHO, P.S. Nalagarh are hereby directed to implement this order within two months from the date of the order. Copies of

this order be given to the parties i.e. complainant, respondent, SHO Incharge Police Station Nalagarh and Protection Officer, free of costs……"

4 Feeling dissatisfied with the aforesaid order dated 17.6.2011, the present petitioner along with his family members preferred an appeal under Section 29 of the Act before the learned Sessions Judge, Solan, on 12.07.2011, who vide judgment dated 11.10.2012 dismissed the appeal and findings as returned by the learned Judicial Magistrate were affirmed.

5 Being aggrieved by the order dated 17.6.2011 and judgment dated 11.10.2012, the petitioner along with his family members filed Cr. Revision No. 260/2012 before this Court and during the pendency of the criminal revision, an attempt was made to reconcile the matter. With the intervention of this Court, finally compromise was effected between the parties and a joint application, bearing registration No. Cr.MP No. 189/2014 was filed by both the parties for passing appropriate directions.

6 This Court vide its order dated 11.03.2014 on the basis of the joint application filed by both the parties disposed

of the aforesaid criminal revision as having been compromised inter se the parties. It would be apposite to reproduce relevant portion of the order dated 11.03.2014, which reads as under:-

> *"2. As per the amicable settlement arrived at, cases pending between them i.e. Case No.7/2 of 2011, arising out of FIR 123 of 2009, pending disposal in the Court of JMIC Court No.1. Nalagarh, Execution Petition titled Archna Kalyan versus Prashant Kumar and others, pending in the Court of learned JMIC, Nalagarh and maintenance proceedings pending in the Court at Nalagarh or any other and further case pending inter-se parties in any other Court will be withdrawn by them and the arrears towards maintenance lying deposited in the Court of JMIC (1), Nalagarh will be remitted to the account of their minor daughter Ruchita in SBI Patiala, which shall remain lying deposited in fixed deposit in a way so that the amount yield the maximum interest till she attains the age of majority. It being so, there hardly remains any controversy, which needs adjudication on merits."*

7 In terms of the compromise, which was effected between the parties and on the basis of the statements as made by the respective parties on 23.4.2014 before this Court in Cr.MMO No. 66/2014, FIR No. 123/2010, registered under Section 498-A read with Section 120-B of the Indian Penal Code along with all the consequential proceedings arising

therefrom against the present petitioner and his mother and sisters was quashed vide order dated 23.04.2014.

8 The present respondent-wife, as observed above, filed an application for execution of the order dated 17.6.2011, wherein it was averred that the amount of maintenance was awarded by the learned Judicial Magistrate in the case, which was filed by the present respondent and the said order was confirmed by the learned Sessions Judge on 11.10.2012 and thereafter, the matter was compromised between the parties before this Court and based upon that, the case was decided. It was stated in the application that the present petitioner and his family members did not honour the compromise, which took place between the parties. The respondent along her minor child was turned out of the house by the petitioner along with his family members on 01.09.2014 i.e. after few months of entering into compromise before this Court. It was averred that no damages and maintenance were paid nor rental accommodation was provided to the respondent and her minor child nor any rent, water and electricity charges were paid. The respondent and her minor child are totally dependent upon her brother and sisters, who are providing financial help to the

respondent. The respondent along with her minor child is living separately from 01.09.2014 after turning out of the house by the petitioner and his family members. A sum of Rs.3,50,000/- i.e. arrears of maintenance for the period w.e.f. 01.09.2014 to 31.07.2017 are due against the present petitioner along with Rs.50,000/- for compensation as awarded by the Judicial Magistrate and the petitioner is legally liable to pay the same to the respondent.

9 The aforesaid application was contested and resisted by the petitioner by filing objections, wherein claim of the respondent was refuted in toto. It was averred that a Khangi Panchayat was convened at New Nalagarh and in that Panchayat, the respondent herself stated to reside separately at Nalagarh Town and she desired not to live in the company of the petitioner. She also agreed not to claim any maintenance for herself or for the female child. It was further averred that since the order dated 17.06.2011, sought to be executed, has merged in the order dated 23.10.2013 and subsequently in order dated 11.03.2014, as such execution petition, as filed by the respondent, is not legally maintainable. Therefore, it was

averred that the application being devoid of any merit deserves to be dismissed.

10 Learned Additional Chief Judicial Magistrate, Nalagarh, vide order dated 17.8.2019 allowed the application filed by the respondent. Feeling aggrieved, the petitioner has approached this Court by medium of instant petition.

11 It has been contended by Mr. Aditya Thakur, learned counsel for the petitioner-husband that the execution petition, which has been filed by the respondent-wife, is neither maintainable nor any relief could have been granted to the respondent in view of the fact that in Khangi Panchayat, she herself has agreed to reside separately. She has forgone her claim about maintenance qua her and minor child. He has contended that in view of the compromise, which was effected between the parties before this Court, execution petition, is not legally sustainable and is liable to be dismissed.

12 On the other hand, Ms. Devyani Sharma, learned Senior Advocate, assisted by Ms. Soma Thakur, Advocate, has defended the impugned order and has vehemently argued that this a classical case, whereby the petitioner-husband is withholding the benefits as granted by the learned Judicial

Magistrate, 1st Class, Nalagarh. She has submitted that after disposal of the criminal revision, the present petitioner and his family members failed to honour terms and conditions of the compromise and the respondent along with her minor child was turned out of the house. She has further submitted that objections which are being raised, are false, frivolous and not sustainable in the eyes of law and the present petition deserves to be dismissed with heavy costs since the petitioner has failed to maintain the respondent and her minor child. Lastly, she has submitted that the respondent along with her minor child is facing lot of difficulties to maintain themselves. The child is studying in school and it is very difficult for the respondent to even arrange school fees for the better education of the child.

13 I have heard learned counsel for the parties and have also gone through the case file.

14 Before touching merits of the case, it would be relevant to discuss exposition of law, on the subject, as laid down by the Hon'ble Supreme Court.

15 The Hon'ble Apex Court in ***Saurabh Tripathi vs. Vidhi Rawal, 2025 SCC Online SC 1158***, has held as under:-

"34. We have already referred to the objects and reasons of the DV Act, 2005, which are reproduced in the decision of this Court in the case of Kunapareddy alias Nookal a Shanka Balaji v. Kunapareddy Swarna Kumari and Anr4. The basic object of the DV Act, 2005, is to protect women from being victims of domestic violence and also to prevent the occurrence of domestic violence in society. It seeks to protect the right of women to reside in their matrimonial home or shared household. Therefore, there is a provision for passing a Residence Order under Section 19. Section 18 provides for granting Protection Orders, which are essentially to prevent the commission of acts of domestic violence against women. The orders which can be passed under Section 20 are with the object of compensating a woman for loss caused due to domestic violence. The custody orders regarding children are also essentially to prevent domestic violence. Even Section 22 provides for passing compensation orders for the injuries, including mental torture and emotional distress, caused by acts of domestic violence. If a complaint is entertained under Section 12(1), the erring respondent cannot be punished as is understood in criminal law. He can be subjected to various orders as provided in Sections 18 to 23. A respondent in the application can be prosecuted only if he commits a breach of a protection order or an interim protection order. Therefore, the consequences of entertaining an application under Section 12(1) are not as drastic as the consequences of setting criminal law in motion. No doubt, orders that can be passed under the DV Act, 2005, can also be very drastic,

but in proceedings under Section 12(1), a respondent cannot be sentenced to suffer imprisonment or a fine as in a criminal trial.

35. When it comes to exercise of power under Section 482 of the CrPC in relation to application under Section 12(1), the High Court has to keep in mind the fact that the DV Act, 2005 is a welfare legislation specially enacted to give justice to those women who suffer from domestic violence and for preventing acts of domestic violence. Therefore, while exercising jurisdiction under Section 482 of the CrPC for quashing proceedings under Section 12(1), the High Court should be very slow and circumspect. Interference can be made only when the case is clearly of gross illegality or gross abuse of the process of law. Generally, the High Court must adopt a hands-off approach while dealing with proceedings under Section 482 for quashing an application under Section 12(1). Unless the High Courts show restraint in the exercise of jurisdiction under Section 482 of the CrPC while dealing with a prayer for quashing the proceedings under the DV Act, 2005, the very object of enacting the DV Act, 2005, will be defeated.

16 In ***Satish Chander Ahuja vs. Sneha Ahuja, (2021) 1 SCC 414***, the Hon'ble Supreme Court has held as under:-

41. As noticed above, from the Statement of Objects and Reasons, the Act was enacted to fulfill the definite objectives for protection of women. This Court had occasion to examine the purpose of enactment of Act, 2005

in Kunapareddy Alias NookalaShanka Balaji Vs. Kunapareddy Swarna Kumari and Anr., (2016) 11 SCC 774 wherein paragraph 12 following was stated:-

> *"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……"*

42. The Act, 2005 is a further step to secure social justice by legislation. There has been several earlier measures for protection of women like Section 125 Cr.P.C. and 498-A of India Penal Code. Justice Krishna Iyer in Captain Ramesh Chander Kaushal Vs. Mrs. Veena Kaushal and Ors., (1978) 4 SCC 70 noted the objectives of enacting Section 125 Cr.P.C. in following words in paragraph 9:-

> *"9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by Courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker*

sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advance the cause--the cause of the derelicts."

17 In ***Krishna Bhattacharjee vs. Sarathi Choudhury, (2016) 2 SCC 705***, the Hon'ble Supreme Court has held as under:-

"2. Prior to the narration of facts which are essential for adjudication of this appeal, we may state that the 2005 Act has been legislated, as its Preamble would reflect, to provide for more effective protection of the rights of the women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. The 2005 Act is a detailed Act. The dictionary clause of the 2005 Act, which we shall advert to slightly at a later stage, is in a broader spectrum. The definition of "domestic violence" covers a range of violence which takes within its sweep "economic abuse" and the words "economic abuse", as the provision would show, has many a facet.

3. Regard being had to the nature of the legislation, a more sensitive approach is expected from the courts where under the 2005 Act no relief can be granted, it should never be conceived of but, before throwing a petition at the threshold on the ground of maintainability, there has to be an apposite discussion and thorough deliberation on the issues raised. It should be borne in mind that helpless

> *and hapless "aggrieved person" under the 2005 Act approaches the court under the compelling circumstances. It is the duty of the court to scrutinise the facts from all angles whether a plea advanced by the respondent to nullify the grievance of the aggrieved person is really legally sound and correct. The principle "justice to the cause is equivalent to the salt of ocean" should be kept in mind. The court of law is bound to uphold the truth which sparkles when justice is done. Before throwing a petition at the threshold, it is obligatory to see that the person aggrieved under such a legislation is not faced with a situation of non-adjudication, for the 2005 Act as we have stated is a beneficial as well as assertively affirmative enactment for the realisation of the constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence."*

18 The law, as reproduced (supra), clearly reveals that that the Act is a welfare legislation specially enacted to give justice to those women, who suffer from domestic violence and for preventing acts of domestic violence.

19 Now, coming to the facts of the present petition, admittedly the present respondent initially approached learned Judicial Magistrate, 1st Class, Court No.1 Nalagarh under Section 12 of the Act for the grant of appropriate relief. The learned JMIC vide order dated 17.6.2011 allowed the said

application, whereby issuing certain directions including maintenance @ Rs.10,000/- per month i.e. Rs.8,000/- per month for respondent and Rs.2,000/- per month for her child from the date of filing of the application and compensation of Rs.50,000/- towards compensation and damages to the respondent. The said findings were affirmed by the learned Sessions Judge, however criminal revision petition was filed before this Court, wherein joint application was filed by both the parties. Relevant para of the said application is reproduced as follows:-

> *"2(ii) That the applicant/petitioner No.2 is the wife of Amar Nath and the mother of applicant/petitioner No.1 and the applicants/petitioners 3 & 4 are the daughters of applicant/petitioner No.2 and Sh. Amar Nath and the sisters of applicant/petitioner No.1. All the applicants/petitioners have amicably settled the matter and agreed that the applicant/petitioner No.1 and respondent/applicant would live together and they would have no objections to the same. Further the parties to the present lis have agreed that they would withdraw all the cases which have been filed against each other. The details of the cases are as under :-*
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> *a). Case No. 7/2 of 2011, arising out of FIR No. 123 of 2009, under Section 498-A of the Cr.P.C. titled as State of H.P. Vs. Prashant Kumar, pending before the Ld. JMIC (Court No.1), Nalagarh, District Solan H.P.*

b). Execution Petition titled as Archna Kalyan Vs. Prashant Kumar and others pending before the Ld. JMIC, Nalagarh, District Solan H.P.

c). Maintenance proceedings pending in the court at Nalagarh or any other cases which is presently pending inter-se between the parties would be withdrawn by the parties and appropriate application in this regard filed by them before the above mentioned courts for withdrawing the cases."

20 As per averments, as contained in the application, it was agreed between both the parties to withdraw all the cases, which have been filed by them against each other. It was agreed that Case No. 7/2 of 2011, arising out of FIR No. 123 of 2009, under Section 498-A of the IPC, titled as State of H.P. Vs. Prashant Kumar; Execution Petition, titled as Archna Kalyan Vs. Prashant Kumar and others pending before the Ld. Judicial Magistrate, 1st Class, (Court No.1), Nalagarh, District Solan H.P.; maintenance proceedings pending in the court at Nalagarh or any other cases which are presently pending inter-se the parties shall be withdrawn by the parties and appropriate application in this regard shall be filed by them before the above mentioned courts for withdrawing the case. Therefore, terms and conditions of the application is very

specific and clear that the parties were to withdraw the cases, which were filed by both of them against each other.

21 As far as first case under Section 498-A IPC is concerned, said FIR was quashed by this Court in Cr.MMO No.66/2014 dated 23.4.2014, in which the present respondent had made statement before this Court. Second case was the execution petition, which was filed by the present respondent for the enforcement of the order dated 17.6.2011. The third case with respect to maintenance proceedings pending in the Court of learned Judicial Magistrate, 1st Class, Nalagarh between the parties.

22 It is the case of the petitioner that once the compromise has been effected between the parties, then the respondent is estopped to file execution petition in view of the orders as passed by this Court on 23.10.2013 and 11.03.2014 (supra)

23 To the said submissions of the learned counsel for the petitioner, it is contended by the learned senior counsel for the respondent that the terms and conditions of the compromise are very clear. As per terms and conditions of the compromise, the present respondent was required to withdraw

execution petition, titled as Archana Kalyan vs. Prashant Kumar pending before the learned Judicial Magistrate, 1st Class, which was filed in pursuance to the order dated 17.6.2011. She has submitted that the respondent never withdrew proceedings/case(s), which were filed under Section 12 of the Act and the orders, passed in those proceedings, which were affirmed by the learned Sessions Judge, were never quashed and set aside by this Court. The only order, which was passed, was with respect to withdrawal of the execution petition. Since the petitioner and his family members failed to honour the terms and conditions of the compromise, arrived at inter se the parties, and the present respondent and her child were turned out of the house, the respondent had no other option, save and except to file application for execution of order dated 17.06.2011 in order to sustain herself and her minor child.

24 Perusal of the aforesaid application demonstrates and proves that after the compromise, which was effected before this Court, the present respondent and her minor child were turned out of the house by the petitioner along with his family members on 1.9.2014 only after few months of said

compromise. Neither any maintenance nor any rental accommodation was provided to them. Even water and electricity charges were also not paid to them. It has been averred in the said application that the respondent and minor child have been neglected and deserted by the petitioner and his family members.

25 The important fact in the present case is that the benefit of compromise was taken by the petitioner and his family members, whereby on the basis of the statements of the present respondent, case FIR registered under Section 498-A read with Section 120 IPC was quashed and set aside. The petitioner himself obtained benefit of the said compromise, however in order to defeat rights of the respondent as also to get rid of to pay amount of maintenance to her, respondent and her minor child were turned out of the house. Neither they are being paid maintenance nor they are being maintained with dignity and honour.

26 As per terms and conditions of the compromise, execution petition was agreed to be withdrawn, which was filed before the learned Judicial Magistrate, 1st Class, Nalagarh. This Court in Criminal Revision No. 260/2012 neither quashed and

set aside order passed in application under Section 12 of the Act nor the proceedings, which were initiated, were set aside. Therefore, the contention of the learned counsel for the petitioner that once the case has been compromised, therefore, the application filed the respondent for execution of the order dated 17.6.2011 is not maintainable does not hold good and is not sustainable in the eyes of law.

27 As observed above, the Hon'ble Supreme Court has held that the provisions of the Act is a welfare legislation and the aggrieved woman, as in the present case, cannot be deprived of her rights on technical grounds. Therefore, the learned Judicial Magistrate has rightly allowed the application for execution of order dated 17.06.2011 filed by the present respondent.

28 It is submitted by the learned senior counsel for the respondent that no amount has been paid by the present petitioner to the respondent and minor child despite passing of the order in the year 2011 i.e. more than 15 years ago and taking entire facts and circumstances of the case, the learned Judicial Magistrate has rightly determined point in controversy

and passed the impugned order, which does not suffer from any error or infirmity.

29 The petitioner has approached this court by invoking provisions of article 227 of the Constitution of India. This Court while exercising supervisory jurisdiction cannot act as a court of first appeal to re-appreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. This is not to substitute its own decision on facts and conclusion, for that of the inferior court.

30 The Hon'ble Supreme Court in ***Garment Craft vs. Prakash Chand Goel, 2022 (4) SCC 181*** has held as under:-

> *15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or*

can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

16. Explaining the scope of jurisdiction under Article 227, this Court in Estralla Rubber v. Dass Estate (P) Ltd. (2001) 8 SCC 97 has observed:-

> *"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of*

> *law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."*

31 Consequently, the instant petition being devoid of any merit deserves to be dismissed. Ordered accordingly. It is made clear that since the parties are litigating for the last more than 15 years, therefore, the learned executing court is directed to take present proceedings to its logical end expeditiously. The pending application (s), if any, also stands disposed of.

(Romesh Verma)
Judge

27.04.2026
(pankaj)