

126 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-19553-2023

Date of Decision:24.04.2023

JASPAL KAUR ALIAS PINKI AND OTHERS Petitioners
Versus
STATE OF PUNJAB AND ANOTHER Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. P.S. Ahluwalia, Advocate for the petitioners.

Mr. Vipin Pal Yadav, Addl. AG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioners through instant petition are seeking quashing of Complaint bearing No.COMA No.3422 of 2022 dated 23.09.2022 (Annexure P-1) filed by respondent under Section 12 read with other provisions of Protection of Women from Domestic Violence Act, 2005 (for short 'DV Act') and impugned notice dated 23.09.2022 (Annexure P-2) whereby Trial Court has called upon the petitioners.

2. The brief facts of the case are that marriage of respondent No.2 was solemnized with Manpreet Singh son of Jasminder Singh according to Sikh rites and ceremonies. The couple could not pull on their matrimonial life and started staying separate. The respondent No.2 preferred a petition under Section 12 read with other provisions of DV Act. The petition came to be filed against husband as well as distant relatives and family friends. Jurisdictional Magistrate vide order dated 23.09.2022 issued notice to the petitioners herein alongwith husband and family members of husband of the complainant.

3. Learned counsel for the petitioners *inter alia* contends that

petitioners are distant relatives of husband of the complainant or family friends of husband of the complainant. They do not fall within the definition of 'respondent' as defined under Section 2 (q) of DV Act, thus, they have been wrongly called upon by Magistrate. There is not even whisper in the impugned complaint against the petitioners still Magistrate has issued notice to the petitioners.

4. I have heard the arguments and perused the records.

5. A two Judge Bench of Hon'ble Supreme Court speaking through Justice U. U. Lalit in “Kamatchi Vs. Lakshmi Narayanan” 2022 SCC Online SC 446 has held that ratio of judgment of Hon'ble Supreme Court in Adalat Prasad vs Rooplal Jindal & Others 2004 (7) SCC 338 is not applicable to a notice issued under Section 12 read with Section 13 of D.V. Act. The relevant findings recorded by Hon'ble Supreme Court read as:

“29. 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. It is, however, true that as noted by the Protection Officer in his Domestic Inspection Report dated 2.08.2018, there appears to be a period of almost 10 years after 16.09.2008, when nothing was alleged by the appellant against the husband. But that is a matter which will certainly be considered by the Magistrate after response is received from the

husband and the rival contentions are considered. That is an exercise which has to be undertaken by the Magistrate after considering all the factual aspects presented before him, including whether the allegations constitute a continuing wrong.

31. Lastly, we deal with the submission based on the decision in Adalat Prasad . 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 rival submissions, appropriate order can be issued. Thus, the matter stands on a different footing and the dictum in Adalat Prasad would not get attracted at a stage when a notice is issued under Section 12 of the Act.”

From the perusal of the judgment of Hon'ble Supreme Court, it is quite evident that scope of notice under Section 12 read with Section 13 of D.V. Act is to call for a response from the respondent so that an appropriate order may be passed. An application under Section 12 cannot be equated with complaint or initiation of prosecution. Notice by Magistrate under Section 13 of D.V. Act is not like cognizance of an offence or issue of process by Magistrate.

5.1 A two Judge Bench of Hon'ble Supreme Court in **Kunappareddy Vs. Kunappareddy Swarna Kumari (2016) 11 SCC 774** while dealing with nature of proceedings under Section 12 of DV Act has held that proceeding under Section 12 of DV Act are civil in nature. The relevant extracts read as:

“11. We have already mentioned the prayers which were made by respondent no.1 in the original petition and prayer ‘A’ thereof relates to [Section 9](#). However, in prayer ‘B’, the respondent no.1 also sought relief of grant of monthly maintenance to her as well as her children. This prayer falls within the ambit of [Section 20](#) of the DV Act. In fact, prayer ‘A’ is covered by [Section 18](#) which empowers the Magistrate to grant such a protection which is claimed by the respondent no.1. Therefore, the petition is essentially under [Sections 18 and 20](#) of the DV Act, though in the heading these provisions are not mentioned. However, that may not make any difference and, therefore, no issue was raised by the appellant on this count. In respect of the petition filed under [Sections 18 and 20](#) of the DV Act, the proceedings are to be governed by [the Code](#), as provided under [Section 28](#) of the DV Act. At the same time, it cannot be disputed that these proceedings are predominantly of civil nature.

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 498A](#) of the Indian Penal Code. 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.

5.2 A Single Judge Bench of Madras High Court in **Dr. P. Pathmanathan and Ors. Vs. Tmt. V. Monika and Anr. 2021 SCC Online Mad 8731** held that application under DV Act could not be equated with complaint as defined under Section 2(d) of Cr.P.C. It was further held that all reliefs granted by Magistrate under DV Act are civil in nature and offence under Section 31 of DV Act would be made out if there is breach of protection order made under the Act.

5.3 A Division Bench of Madras High Court in **P. Ganesan Vs. M. Revathy Prema Rubarani (2022) SCC Online Mad 3598** held that petition under Article 227 of Constitution of India to quash application instituted under the DV Act is not maintainable. It was held that proceedings under Section 12 of DV Act are civil in nature, however, petition under Section 482 Cr.P.C is maintainable against proceedings/application arising out of petition under Section 12 of DV Act.

6. In view of difference of opinion among different Benches, qua nature of proceedings under Section 12 of DV Act and jurisdiction of High Court under Section 482 Cr.P.C vis a vis Article 227 of the Constitution, the matter came to be referred to Full Bench of Madras High Court in **Arul Daniel and others Vs. Suganya 2022 SCC Online Mad 5435**.

Full Bench relying upon plethora of judgments including

judgment of Hon'ble Supreme Court in “Kamatchi Vs. Lakshmi Narayanan” 2022 SCC Online SC 446 and Kunapareddy Vs. Kunapareddy Swarna Kumari and Anr. (2016) 11 SCC 774 has held:

(i) An application made under Section 12 of DV Act read with Rule 6(1) of DV Rules is not a complaint as defined under Section 2 (d) of Cr.P.C.

(ii) The procedure for cognizance prescribed under Section 190 Cr.P.C is not applicable to a proceeding under DV Act. The respondents before Magistrate are not accused, thus, a notice fixing a date of hearing is issued under Section 13 of DV Act. It is a notice and not summons under Section 61 Cr.P.C.

(iii) A proceeding under Chapter IV of DV Act is not a criminal proceeding and a Magistrate exercises civil jurisdiction while granting one or more reliefs under Sections 18-23 of DV Act. A Magistrate exercising jurisdiction under Section 12 of DV Act is not a criminal Court.

(iv) A petition under Section 482 of Cr.P.C. is not maintainable against an application under Section 12 of DV Act. The proceedings 12 of DV Act, are civil proceedings, thus, petition under Section 482 of Cr.P.C. is not maintainable. A petition under Article 227 of the Constitution of India is maintainable on limited ground of patent lack of jurisdiction.

(v) Personal appearance of respondents should not be ordinarily insisted upon, if the parties are effectively represented through a counsel.

(vi) If the respondent does not appear either in person or

through a counsel, in reply of notice under Section 13, the Magistrate may proceed to determine the application *ex parte*.

(vii) It is not mandatory for the Magistrate to issue notice to all parties arrayed as respondents in an application under Section 12 of DV Act. The Magistrate should apply his mind and in all cases involving distant relatives and other third parties. The Magistrate must set out reasons that have compelled him to issue notice to such parties.

(viii) As there is no process as contemplated under Section 204 Cr.P.C in a proceeding under DV Act, the principle laid down in Adalat Prasad (supra) is not applicable.

(ix) It is open to an aggrieved respondent to approach Magistrate and raise the issue of maintainability and other preliminary issues.

(x) An aggrieved party may take recourse to section 25 which authorizes Magistrate to alter, modify or revoke any order under the Act.

(xi) It is open to respondents, at any stage of the proceeding, to apply to Magistrate to have their names deleted from the array of respondents, if they have been improperly joined as parties.

(xii) The Magistrate can draw sustenance from the power under Order I Rule 10 (2) of C.P.C. A judicious use of power would ensure that the proceedings under DV Act do not generate into a weapon of harassment and would prevent the process of Court from being abused by joining all and sundry as parties to the lis.

(xiii) Neither revision to High Court under Section 397

Cr.P.C. nor a petition under Section 482 Cr.P.C is maintainable against an order of Sessions Court under Section 29 of DV Act because appeal is continuation of original proceeding and original proceeding bears a civil character, thus, it is impossible to term an appeal arising out of such a case as a criminal proceeding.

7. From the above cited judgments following principles are culled out:

(i) Proceedings under Section 12 of DV Act are civil in nature. Notice issued under Section 13 of DV Act is not a summons under Section 61 of Cr.P.C. The principle laid down by Hon'ble Supreme Court in Adalat Prasad (supra) is not applicable to notice issued under Section 13 of DV Act.

(ii) Petition under Section 482 Cr.P.C is not maintainable against petition under Section 12 or notice issue under Section 13 of DV Act.

(iii) An order passed by Sessions Court under Section 29 is continuation of civil proceedings, thus, revision under Section 397 or petition under Section 482 assailing order passed by Sessions Court under Section 29 is not maintainable.

(iv) Magistrate is supposed to apply his mind at the time of issuing notice under Section 13 of DV Act and in case an application is moved by respondent on the ground of maintainability or jurisdiction or for deletion from the array of respondents, Magistrate is supposed to adjudicate the application.

8. On being confronted with aforesaid judgments, learned counsel concedes that petition under Section 482 Cr.P.C. assailing a

petition filed under Section 12 of DV Act read with notice under Section 13 of DV Act is not maintainable, however, he prays that Magistrate may be directed to decide his application qua maintainability and jurisdiction, if filed at any stage.

9. From the perusal of record, it comes out that respondent No.2 has filed petition under Section 12 of DV Act against petitioners alongwith with her husband and other relatives. A Magistrate vide order dated 23.09.2022 has issued notice to present petitioners besides notice to other respondents.

In view of law laid down by Hon'ble Supreme Court of "Kamatchi (supra) and Kunappareddy (supra) and Full Bench of Madras High Court in Arul Daniel (supra), the present petition is not maintainable, however, petitioner is at liberty to move an appropriate application on the ground of maintainability and if any such application is moved, the Magistrate shall pass an appropriate order qua maintainability of petition under Section 12 of DV Act against the petitioners.

10. This Court has observed that everyday petitions are filed before this Court under Section 482 Cr.P.C assailing petition filed under Section 12 and notice under Section 13 of DV Act. It has further been noticed that parties are filing revision petition under Section 397/401 Cr.P.C. against order passed by Appellate Court under Section 29 of DV Act.

In view of judgments of Hon'ble Supreme Court, Full Bench of Madras High Court and with intent to minimise litigation especially against distant and sundry relatives, before parting with this judgment,

this Courts finds it appropriate to issue following directions to Magistrates posted within the jurisdiction of this Court:

(i) In case of petition under Section 12 of DV Act, all the respondents may not be mechanically issued notice under Section 13 of DV Act. Notice at the first instance may not be issued to distant relatives. The Magistrate is expected to apply his mind qua distant and sundry relatives of the respondents arrayed by aggrieved person.

(ii) The presence of respondents may not be required where respondents are represented through counsel;

(iii) In case application is filed by the respondents on the ground of jurisdiction or maintainability or deletion from array of respondents, the Magistrate is expected to pass an appropriate order;

(iv) In case an application is filed seeking alteration, modification or revocation of order passed under the Act, the Magistrate in terms of Section 25 of DV Act is expected to pass an order, if parties are able to show change of circumstances.

11. Disposed of in above terms.

12. The Registrar General of this Court is directed to circulate copy of this judgment to all District and Sessions Judges of Sessions Divisions, which are falling within jurisdiction of this Court.

(JAGMOHAN BANSAL)
JUDGE

24.04.2023

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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>