

(2014) 07 P&H CK 0778

High Court Of Punjab And Haryana At Chandigarh

Case No: Crl. Misc. No. M-33855 of 2013

Parvinder Kaur

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: July 16, 2014

Acts Referred:

- Constitution of India, 1950 - Article 14, 15, 21
- Criminal Procedure Code, 1973 (CrPC) - Section 125, 482
- Protection of Women From Domestic Violence Act, 2005 - Section 12, 12(1), 18, 19, 20

Hon'ble Judges: Anita Chaudhary, J

Bench: Single Bench

Advocate: Abinash Jain, Advocate for the Appellant; Gazi Mohd., D.A.G., Kshitij Sharma, Advocate (Amicus Curiae), Advocate for the Respondent

Final Decision: Dismissed

Judgement

Anita Chaudhary, J.

This is a petition u/s 482 Cr.P.C. for quashing the order (Annexure P-4) dated 23.07.2013 passed by the Judicial Magistrate 1st Class, Ludhiana who allowed the application (Annexure P-1) and restored the complaint filed under the Domestic Violence Act, 2005.

2. The brief facts necessary for disposal of the case are briefly being noticed. Daljot Kaur-respondent no. 2 filed a complaint u/s 12(1) of the Protection of Women from Domestic Violence Act, 2005. That complaint was dismissed for non-prosecution on 26.03.2012 on the failure of appearance of the complainant. A restoration application (Annexure P-1) was filed which was allowed after hearing both the sides. The order passed on the application has been assailed.

3. I have heard both the sides.

4. The contention raised on behalf of the petitioners is that the Magistrate had no power to review and recall its order as there is no provision for restoration of a complaint filed under the Criminal Procedure Code and the only remedy is u/s 482 Cr.P.C. Referring to the case of Suresh and others Vs. Rekha 2010(1) RCR (Criminal) 45, it was urged that there a complaint was dismissed in default and the Sessions Judge had restored the same and it was held that since the Magistrate could not recall its order and it had declined to review its own order, the proper course was to file revision and here the proceedings under the Domestic Violence Act are criminal in nature and the complaint could not have been restored. Reliance was placed upon [Adalat Prasad Vs. Rooplal Jindal and Others](#),

5. The submission on behalf of the private respondent is that the authority referred to by the petitioners is not applicable as it did not deal with the Domestic Violence Act and the proceedings u/s 12 of the Domestic Violence Act are not criminal proceedings but are civil proceedings and the case could be restored. It was urged that before the Bombay High Court, when the Magistrate had taken cognizance of a complaint u/s 12 of the Domestic Violence Act, it was challenged u/s 482 Cr.P.C. of the Criminal Procedure Code and it had been held that the provisions of the Criminal Procedure Code could not be invoked. It was urged that the Hon"ble Gujrat High Court in [Jaydipsinh Prabhatsinh Jhala and Others Vs. State of Gujarat and Others](#), had taken a view that the proceedings under the Domestic Violence Act were not strictly criminal in nature. It was urged that Bombay High had taken a view that the proceedings u/s 125 Cr.P.C. are of civil nature and they are dealt with summarily in criminal Courts only for expeditious disposal on the grounds of convenience and social order and the respondent is never arrayed as an accused. It was urged that the proceedings under the Domestic Violence Act are akin to the proceedings u/s 125 Cr.P.C. Reliance was placed upon [Mangesh Sawant Vs. Minal Vijay Bhosale and Another](#), [Jaydipsinh Prabhatsinh Jhala and others Vs. State of Gujrat and others 2010\(5\) RCR \(Criminal\) 31](#), [Shri Pandharinath Sakharam Thube Vs. Kum. Surekha Pandharinath Thube and Others](#), [Sk. Alauddin @ Alai Khan Vs. Khadiza Bibi @ Mst. Khodeja Khatun and others 1992\(1\) DMC 268](#).

6. This petition has been filed for quashing the order (Annexure P-4) that had been passed by the Judicial Magistrate vide which the application for restoration of the petition had been allowed. The main contention of the petitioners is that a complaint which had been dismissed for non-prosecution could not have been restored and reliance had been placed upon Adalat Prasad's case and Suresh Kumar's case (supra). Both the authorities referred to by the petitioners are not applicable as none of them relate to the proceedings under the Domestic Violence Act.

7. The Kerala High Court in [Vijayalekshmi Amma Vs. Bindu](#), was dealing with a petition under the Domestic Violence Act, 2005. The question raised was whether the extra ordinary jurisdiction of the High Court u/s 482 Cr.P.C. could be invoked to

quash the petition filed by a person claiming to be an aggrieved person against respondent for reliefs provided under the Act. The relevant portion of Para Nos. 10, 11 and 19 of the judgment are as under:-

10. ...The question whether the extra ordinary inherent powers u/s 482 of Code of Criminal Procedure is to be exercised by the court to quash a proceeding initiated under the Protection of Women from Domestic Violence Act, 2005 is to be considered in the background of the settled legal position. For a better appreciation of the relevant aspects, it is necessary to bear in mind the object and purpose of the Act. The Act was enacted to provide for more effective protection of rights of woman guaranteed under the Constitution, who are victims of violence of any kind occurring within the family and incidental thereto. Relevant portion of the Statement of Objects and reasons of the Act reads:-

It is therefore proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

(underline supplied).

11. It is clear that the Act was enacted to provide "a remedy under civil law" to protect the woman from being victims of domestic violence and to prevent occurrence of domestic violence in the society.

19..... a party against whom proceedings were initiated by the Magistrate u/s 12, on a petition filed u/s 12(1) of the Act seeking relief u/s 18 to 23, has adequate remedy before the Magistrate, it is not for the High Court to exercise the extraordinary inherent powers and quash the proceedings. Section 482 is to be invoked in appropriate cases either to give effect to any order passed under the Act or to prevent abuse of process of any court or to secure the ends of justice, when cognizance was taken by the Magistrate for an offence under sub section (1) of Section 31 or Section 33 of the Act. In all other cases, the affected party could raise the question and seek an order from the Magistrate including the maintainability of the proceedings and if an order is passed against him, he is at liberty to file an appeal as provided u/s 29 of the Act. If that be so, it is not for this court to invoke the extraordinary jurisdiction u/s 482 of the Code of Criminal Procedure, to quash a proceeding initiated u/s 12(1) of the Act.

8. The Gujrat High Court in Jaydipsinh's case (supra) held that the proceedings under the Domestic Violence Act were not strictly criminal in nature and the proceedings were in the nature of civil remedy emphasizing the fact that the Magistrate while disposing of the application u/s 12 could lay down its own procedure for disposal.

9. In the light of the above, it is held that the petition u/s 482 Cr.P.C. could not be filed.

The petition is dismissed.