

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Miscellaneous Application No. 912 of 2009

Smt. Anita Sardana

.....Applicant

Versus

Smt. Divya Mehta and others

.....Respondents

Sri Ramji Srivastava, Advocate for the petitioner.
Sri S.S. Adhikari, AGA for the respondent no. 3.

Dated: November 30, 2009

Hon'ble Alok Singh, J.

(By the Court)

Heard Sri Ramji Srivastava, Advocate for the petitioner.

Sri S.S. Adhikari, learned A.G.A. for the State/respondent no.3.

By way of present application under section 482 of the Code of Criminal Procedure, proceedings of Criminal Case No.8822 of 2009 under section 18,19,20 & 22 of the Protection of Women From Domestic Violence Act, 2005 is put under challenge.

Sri Ramji Srivastava, learned counsel for the petitioner argued that neither application is in Form No.4 of the Rule nor opinion of the Protection Officer is in Form no.1 as per Rule.

He further argued that no application is maintainable against the petitioner who is female and living in different city.

I have carefully perused the record. From the perusal of the application made before learned Magistrate, it is clear that relief no.3 is sought pertaining to Stridhan which was allegedly not being

returned to the applicant by the petitioner and other opposite parties.

In view of the proviso of 2(f) lady can be made respondent if relief is available against her. Moreover, in view of the section 3 of the Act, non-refund of stridhan and illegal use of stridhan falls within the definition of Domestic Violence.

Till date no order is passed by learned Magistrate. He has only issued show cause notice to the OPs to show cause as to why reliefs claimed in the application be not granted to the applicant. Petitioner can file her reply before the Magistrate taking all available defences and plea of non-maintainability of the application. In view of this present petition seems to be premature.

Filing of application otherwise than in Form IV and submission of report by Protection Officer not in Form I of the Rules is procedural irregularity. It is settled principle of law that irregularity can be cured at any stage. Magistrate can direct the applicant to submit her application on Form IV and may direct the Protection Officer to submit his report in Form I of the Rule afresh before proceeding further.

In view of the above, I find no force in the petition. Petitioner may file his reply to the show cause issued by the learned Magistrate. Petition is dismissed.

(Alok Singh, J.)
30.11.2009

JKJ

