

## HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Petition u/s 561-A Cr.P.C. No. 35/2014

CrMA No. 35/2014

Date of decision:21.10.2014

Rakesh Manhas and ors.

Vs.

Aruna Manhas

**Coram:**

**Hon'ble Mr. Justice Janak Raj Kotwal, Judge**

**Appearing counsel:**

For petitioner(s): Mr. B. B. Kotwal, Advocate

For respondent(s): M/s V. S. Saini and I. H. Shah, Advocates

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| (i)  | Whether to be reported in<br>Press, Journal/Media: | Yes/No |
| (ii) | Whether to be reported in<br>Journal/Digest:       | Yes/No |

1. This petition seeks invoking of inherent jurisdiction of this Court under section 561-A Cr.P.C. to quash a 'complaint'(application) under section 12(1) of the Jammu and Kashmir Protection of Women from Domestic Violence Act, 2010 (for short the Act) filed against the petitioners by the respondent as also the order dated 27.01.2014 passed by the trial Magistrate.
2. Heard. I have perused the record.
3. Petitioner No. 1 and the respondent are husband and wife, their marriage was solemnized on 18.09.2012. Petitioners 2 and 3 are the parents of petitioner No. 1 and petitioner No. 4 is his sister. Petitioner No. 5 is the husband of petitioner No. 4.

4. In her application under section 12(1) of the Act filed before learned Special Excise Magistrate, Jammu, respondent has leveled various allegations of violence and harassment against the petitioners. I may state briefly; the respondent has alleged that petitioner Nos. 1 to 3, who constitute a joint Hindu family, were not happy with the items of dowry brought by her so immediately after marriage they started subjecting her to physical and mental torture. They subjected her to physical torture publically during short span of her stay at her matrimonial house. On every occasion, petitioner Nos. 4 and 5 would encourage petitioner Nos. 1 to 3 and thus to add fuel to fire. Respondent has contended that an agreement was executed by petitioner Nos. 2 and 3 in which they had admitted that they will not desert or maltreat her but in spite of that the petitioners had been beating her severely. She has stated further that she lodged a complaint to SHO, Women Cell, Jammu but no action was taken. Respondent has alleged also that petitioner Nos. 2 to 4 did not allow her to share room with her husband whenever he came to his house from Jalandhar, where he is working as a Team Leader in Airtel Company. They also did not allow her to go with her husband to Jalandhar. She has alleged that in April, 2013, petitioners gave her a severe beating

and demanded two lac rupees or a car from her parents. In May, 2013, petitioner Nos. 1 to 3, after giving her a beating, threw her out of the matrimonial house at the instance of petitioner Nos. 4 and 5. They again demanded two lac rupees from her, which she could not pay and the petitioners subjected her to starvation. She was left with no option than to file a petition under section 488 Cr.P.C. against petitioner No. 1. She has contended that in the course of pendency of petition under section 488, petitioner No. 1 came to Jammu and with the intervention of some relatives took her to Jalandhar. However, 4-5 days later, petitioner No. 1 subjected her to physical thrashing in the night of 18<sup>th</sup> January, 2014. At that time other petitioners had been guiding the petitioner No. 1 telephonically from Jammu. She, however, managed to come back to Jammu, narrated the incident to her parents and report was lodged with Women Cell, Police Station, Jammu on 19<sup>th</sup> January, 2014.

5. Having alleged as above, the respondent in her application before the Magistrate has sought order of protection under section 18 of the Act prohibiting the petitioners from committing any act of violence against her and 'consequential relief' under section 19(1)(f) of the Act 'by providing suitable

accommodation' to her with her husband at Jalandhar.

6. Respondent also filed an application for grant of interim relief seeking a direction that till disposal of the main application, petitioner No. 1 should provide her accommodation with him at Jalandhar or where he presently resides as also a direction to officer incharge of the nearest Police Station to provide her protection against domestic violence and to assist her in implementation of the order to be passed by the Magistrate.
7. Learned Magistrate, on taking cognizance of the applications, seems to have recorded preliminary statement of the respondent and has issued notice to the petitioners. Besides, the learned Magistrate in exercise of power under section 23 of the Act has granted interim relief by issuing a direction to petitioner No. 1 (husband) to provide accommodation to the respondent (wife) with him at Jalandhar and a direction to Additional SSP, Jalandhar to extend full police protection to the applicant in terms of section 19(5) of the Act.
8. Petitioners seek quashing of the application mainly and precisely on the ground that the allegations are totally imaginary, false, frivolous and baseless and the filing of the application is sheer abuse of process of

court and actuated with *mala fides*. It is contended that from last about one year the respondent is residing with her parents at Jammu, she is getting regular maintenance allowance under section 488 Cr.P.C. from petitioner No. 1 so question of harassing or maltreating her does not arise. It is contended further that application has not been filed in Form (II) as prescribed under Rule 6(1) of the Rules framed under the Act (for short the Rules) and has not been verified as required under law. It is also contended that petitioner Nos. 4 and 5 are not the members of the family of petitioner No. 1 to 3 so no application under the Act against them is maintainable.

9. Petitioners seek quashing of the impugned order dated 27.01.2014 granting interim relief to the respondent on the ground that learned Magistrate has passed the order arbitrarily without holding any inquiry and appointment of counselor. The same has been passed arbitrarily without application of mind and notice to petitioners.
10. Mr. B. B. Kotwal, learned counsel for the petitioners submitted that an application leveling false and absurd allegations amounts to abuse of process of court and is liable to be quashed. Mr. Kotwal relied upon a judgment of a Co-ordinate Bench of this Court in *Jeewan Krishan Raina v Chandoo Devi*, 2013 (3)

Crimes 564. Mr. Kotwal submitted further that arraying sister and brother-in-law of petitioner No. 1 as non applicants in the application is not permissible because they cannot be said to have any domestic relationship with the respondent and cannot be proceeded against for an act of domestic violence. In support, Mr. Kotwal relied upon *Ashish Dixit and ors v State of U. P*, 2013 (1) Crimes 216 (SC). Mr. Kotwal would say further that neither the application nor the supporting affidavit is in the prescribed forms so complaint is not maintainable and the impugned order is without jurisdiction. Mr. Kotwal would say further that the impugned order dated 27.01.2014 has been passed by the learned Magistrate without recording satisfaction as required under section 23 of the Act and calling and taking into consideration the report of a Protection Officer or a counselor which is a mandatory requirement under proviso to section 12(1) of the Act. In support, Mr. Kotwal relied upon judgment dated 11.07.2014 rendered by a Coordinate Bench of this Court in 561-A No. 356/2013, CMA No. 434/2013.

11. Per contra, M/s. V. S. Saini and I. H. Shah, Advocates supported the application and the impugned order. They submitted that under the Act an aggrieved person can straightway make an application to the

Magistrate without first approaching any Protection Officer or a counselor or service provider. Consideration of Protection Officer's report therefore, cannot be taken as mandatory requirement under section 12(1) of the Act. Learned counsel relied upon *Milan Kumar Singh v State of U. P*, 2007 Cr.LJ 4742. Learned counsel also submitted that the application clearly makes out a case of domestic violence against the petitioners and that a Magistrate is empowered to grant interim relief under section 23 of the Act.

12. To accord consideration to respective pleas and submissions made at the Bar, I may refer to some of the relevant provisions of the Act:

12.1 Under section 12(1) of the Act an 'aggrieved person' or a Protection Officer or any other person on behalf of the aggrieved person may lodge an application to the Magistrate seeking one or more reliefs under the Act. Clause (a) of section 2 defines 'aggrieved person' as:

“(a) ‘*aggrieved person*’ means any woman who is in a *domestic relationship* with the respondent and who alleges to have been subjected to any act of *domestic violence* by the respondent.

(Emphasis added)

12.2. Clause (f) of section 2 defines ‘*domestic relationship*’:

(f) ‘*domestic relationship*’ means a relationship between two persons who live or have, at any

point of time, lived together in a *shared household*, when they are related by consanguinity, marriage, adoption or are family members living together as a joint family.”

(Emphasis added)

12.3. Domestic violence in relation to clause (a) of section 2 and for the purpose of the Act is defined in section 3 of the Act.

13. Section 12, section 3 and section 2 (a) and (f) of the Act when read in juxtaposition, would make it clear that an application under section 12(1) can be filed by or on behalf of a woman against a person or persons who has/have subjected her to any act of *domestic violence* and further that an act of domestic violence can be said to have been committed only by a person who is in a ‘*domestic relationship*’ with that woman. A ‘*domestic relationship*’ is a relationship between two persons who live or have, at any point of time, lived together in a ‘*shared household*’, when they are related by consanguinity, marriage, adoption or are family members living together as a joint family. An act of *domestic violence* cannot be said to have been committed when the person alleged to have committed the violence and the woman against whom the violence has been committed do not live or had never lived together in a ‘*shared household*’.



14. Applying the above principles envisaged under the Act, there will be no hesitation in holding that petitioner Nos. 4 and 5 cannot be said to have subjected the respondent to any *domestic violence* and are not liable to be proceeded under section 12(1) of the Act for the reason that it is not the respondent's case that they and the respondent live or had ever lived together in a *shared household*. Application filed by the respondent before the learned Magistrate on its plain reading would show that at no point of time petitioner Nos. 4 and 5 had shared any household or resided with the respondent. The only allegation of the respondent against them is that they had been adding fuel to the fire and that at their instance, petitioners 1 to 3 had thrown her out of the matrimonial house. No act of *domestic violence* therefore, can be said to have been committed by the petitioners 4 and 5 on a bare look at the application filed by the respondent and learned Magistrate should not have proceeded against them. In somewhat similar situation Supreme Court in Ashish Dixit's case (*supra*) has quashed proceedings against respondents, other than husband and his parents and I may quote paras 3 and 4 of the judgment:

“3. In the petition filed by respondent No. 2, apart from arraying her husband and her parents-in-law as parties to the proceedings, has included all and sundry, as respondents. To say the least, she has even alleged certain actions said to have been done by the tenant whose name is not even known to her.

4. In a matter of this nature, we are of the opinion that the High Court at least should have directed that the petition filed by respondent No. 2 be confined to her husband as also her parents-in-law and should not have allowed the impleadment of respondent Nos. 4 to 12.”

15. Viewed thus, the application and the proceedings to the extent of petitioner Nos. 4 and 5 are liable to be quashed. However, all the ingredients of commission of an act of *domestic violence* by petitioner Nos. 1 to 3 are *prima facie* made out on a bare reading of the application made by the respondent and no reason for disbelieving or rejecting the allegations and quashing the application at its threshold on that score in exercise of inherent jurisdiction of this Court is made out. High Court under section 561-A Cr.P.C. (sec. 482 of the Central Code) is vested with inherent jurisdiction to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of process of any court or otherwise to secure the ends of justice. The jurisdiction of the High Court is vast indeed but it is well settled that this jurisdiction is to be exercised cautiously, carefully and

sparingly and the High Court has not to function as a Court of appeal or revision.

16. Payment of maintenance allowance under section 488 Cr.P.C. by petitioner No. 1 to the respondent cannot be taken as a bar to filing an application under section 12(1) of the Act by the respondent given the relief sought by her. Respondent has sought firstly, 'protection order' as provided under section 18 of the Act and secondly, the 'residence order' as provided under section 19 of the Act. Seeking such reliefs is independent of and unconnected with the relief of maintenance available under section 488 Cr.P.C.
17. Contention raised by the Mr. Kotwal, learned Counsel for the petitioners also is that learned Magistrate has proceeded against the petitioners without calling and taking into consideration the report of a Protection Officer or a Service Provider. It is seen in this relation that under section 8(1) of the Act, Government has to appoint Protection Officer (s) for specified area(s), who shall exercise powers conferred on him/them by or under the Act. Under section 4 of the Act read with Rule- 4 of the Rules '*any person*' who has reason to believe that an act of domestic violence has been, or is being or is likely to be committed, may give information about it to the Protection Officer . Rule 5 casts a duty on the Protection Officer to prepare

Domestic Incident Report (DIR) in Form-1 on receipt of a complaint of domestic violence and submit the same to the Magistrate and forward copies thereof to the Police Officer, Incharge of the Police Station within the local limit of jurisdiction of which the domestic violence alleged to have been committed has taken place as also a copy to the Service Provider of that area. Section 9(1) lays down the duties and functions of a Protection Officer. They include *inter alia* duty; *i)* to make a Domestic Incident Report to the Magistrate upon receipt of a complaint of domestic violence and *ii)* to make an application in prescribed form and manner to the Magistrate, if the aggrieved persons so desires, claiming relief for issuance of protection order. Contextually, Rule 8(1) also lays down the duties and functions of the Protection Officer and casts a duty on him/her *inter alia* to assist the aggrieved persons in making the application under the Act, if the aggrieved persons so desires. Rule 8(2) empowers a Magistrate to direct the Protection Officer to conduct home visit of shared household premises and make preliminary inquiry in regard to granting ex parte interim relief to the aggrieved person(s) under the Act and file a report to the Magistrate on the emoluments, assets, bank accounts or any other documents as may be directed by the Magistrate.

18. Section 10 of the Act, requires a voluntary association, registered under the Societies Registration Act, or a company, registered under Companies Act or any other law for the time being in force with the objective of protecting the rights and interests of the women by any lawful means, to register itself with the Government as Service Provider for the purpose of the Act. Such a Service Provider has power *inter alia* to record the domestic incident in the prescribed form 'if the aggrieved person so desires' and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area in which the domestic violence takes place.
  
19. It is seen that under section 4 of the Act '*any person*' can give information of domestic violence to the Protection Officer and under section 10 an aggrieved person may approach a Service Provider to record a domestic violence report. Under section 12 of the Act, application for seeking one or more reliefs under the Act can be made primarily by an '*aggrieved person*' or a Protection Officer or any other person on her behalf. Proviso to section 12 is important in context of the submission that before passing any order on the application made under section 12(1), the Magistrate has to call and accord consideration to a Domestic

Incident Report from the Protection Officer or the Service Provider. Proviso to section 12(1) reads:

“Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident/report received by him from the Protection Officer or the service provider.”

20. Question thus raised is whether calling and according consideration to Domestic Incident Report of a Protection Officer or the Service Provider is *sine qua non* for passing an order, interim or final, on an application under section 12(1) of the Act?
21. A comparative reading of sections 4, 9 and 10 of the Act and Rules 4 and 8 of the Rules on one hand and section 12 of the Act on the other would make it clear that giving of information about domestic violence to the Protection Officer under section 4 or to Service Provider under section 10 and making an application seeking relief under section 12(1) are two different and independent aspects of the Act. Making an application under section 12(1) to the Magistrate is no way linked with or dependent upon providing information to the Protection Officer or the Service Provider. To say the other way, giving information to Protection Officer or Service Provider and their report to the Magistrate in no way can be taken as a *sine qua non* for making an application under section 12(1) to

the Magistrate. It is open to an aggrieved person to straightway make an application to the Magistrate under section 12(1) seeking one or more reliefs under the Act. The only interpretation that can be given to the proviso to section 12(1) of the Act is that the Magistrate before passing any order on the application of the '*aggrieved person*' will have to accord consideration to a Domestic Incident Report of a Protection Officer or a report of a Service Provider, if such a report has been received by the Magistrate. Key to such interpretation seem to have been made available in the proviso itself by use of word '*any*'. Proviso does not mandate calling for a report from a Protection Officer or Service Provider but refers to '*any report*' received from a Protection Officer or Service Provider, which, however, would be available only in a case where information to the Protection Officer or a Service Provider about an act of domestic violence had been given by the aggrieved person himself or by '*any person*'. I, therefore, find no substance in petitioners' contention that calling and according consideration to report of Protection Officer or a Service Provider is imperative or *sine qua non* for proceeding and passing an order on an application under section 12(1) of the Act and would hold that such a report is not necessary in every case. Similar view has been taken by the High Court of

Allahbad in Milan Kumar Singh's case relied upon by learned respondent's counsel. Similar contentions having been raised in that case, High Court after referring to relevant provisions of Protection of Women from Domestic Violence Act, 2005 and the rules framed thereunder, which are similar to the Act (J&K Act), High Court held:

"7. A plain reading of the Section shows that the aggrieved person can file complaint directly to the Magistrate concerned. This is the choice of the aggrieved person that instead of direct approaching the Magistrate, he or she can approach the Protection Officer and in case of emergency, the service provider and with their help to the Magistrate concerned. The word "or" used in Section 12 of the Act is material, which provides a choice of the aggrieved Oh to approach in the aforesaid manner. There is no in direct approaching the Magistrate for taking cognizance in the matter. This is for the Magistrate concerned to take help of Protection Officer and service provider after receiving the complaint provided, he feels it necessary for final disposal of the dispute between the parties. If the parties concerned or Magistrate takes help of the Protection Officer, he, will submit a Domestic Incident Report to the Magistrate concerned."

22. I am not in agreement with the contention of Mr. Kotwal, learned counsel for the petitioners that the Coordinate Bench of this Court in judgment dated 11.07.2014 in Vinay Sharma's case (supra) has taken a view as propounded by Mr. Kotwal. Learned Coordinate Bench in that case has also emphasized



necessity of according consideration to domestic/incident report but that necessity would arise only if such a report is there and not calling the report.

23. Another ground taken for quashing of the application is that the same has not been filed in Form-II as prescribed under Rule 6(1) of the Rules and verified in the prescribed manner. Rule 6(1) reads as under:

**“6. Applications to the Magistrate.-**

(1) Every application of the aggrieved person under section 12 of the Act shall be in Form II or as nearly as possible thereto.”

24. On its plain reading, it would be clear Rule 6(1) does not make it mandatory for the applicant to prepare an application under section 12(1) of the Act in Form II only. The Rule provides also that it may be as nearly as possible to Form-II. Form-II on its reading would show that it mainly provides for giving the name of the person (aggrieved person/Protection Officer/any other person on behalf of aggrieved person) who makes the application and details about the order(s) sought from the Magistrate, that is, Protection Order under section 18/Residence Order under section 19/Monetary Reliefs under section 20/ Custody Order under section 21/Compensation Order under section 22. A copy of the application under section 12(1)

made by respondent before the Magistrate is available on the file. All the requisite information as contemplated in Form-II and even much more is stated in the said application. Petitioners' contention in this regard, therefore, not only is without any substance but is misconceived too. It may be stated in this regard that the Act is a welfare legislation to provide for effective protection of rights of women guaranteed under the Constitution, who were victims of domestic violence. A relief sought under the Act will not be defeated merely on technical defects like application having not been filed in prescribed form unless the application does not convey or make out what is required and sufficient for grant of the relief.

25. For all that said and discussed above, I find no merit in the prayer for quashing the application insofar as it relates to petitioner Nos. 1 to 3, though it has merit, as said above, in regard to petitioner Nos. 4 and 5, who are the sister and sister's husband of petitioner No. 1 and are/were not in domestic relationship with the respondent.
26. Besides the application, petitioners have also sought quashing of the interim and *ex parte* order passed by learned Magistrate on 27.01.2014 in terms of section 23 of the Act. Section 23 reads as under:

**“23. Power to grant interim and ex parte orders.-**

(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application *prima facie* discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an *ex parte* order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or section 22, as the case may be, against the respondent.”

27. Sub-section 1 of section 23 empowers the Magistrate to pass interim order and sub-section 2 lays down the requirements to be fulfilled before passing *ex parte* interim order, granting relief(s) as contemplated under sections 18, 19, 20, 21 and 22. Section 23 on its plain reading would show that Magistrate can grant *ex parte* interim relief only on *prima facie* satisfaction that respondent is committing or has committed an act of domestic violence or that there is a likelihood that respondent may commit an act of domestic violence. Such a satisfaction must be recorded in the order passed by the Magistrate or should be evident by sufficient implication.
28. The impugned *ex parte* order passed by the learned Magistrate on 07.06.2014 on its plain reading would show that the same is not in conformity with section

23 of the Act and seems to have been passed in disregard of sub-section (2) thereof. Learned Magistrate has not recorded his *prima facie* satisfaction about commission of any domestic violence and has rather made the respondent's willingness to reside with her husband as basis for recording an out of context observation that 'real differences and discomfort are/is interse' the respondent and her parents-in-law. The interim order passed by the learned Magistrate is not legally correct and deserves quashing.

29. There is yet another reason that calls for reconsideration of the interim relief granted by the learned Magistrate. The relief granted is the 'Residence Order' in terms of section 19(f) of the Act as sought by the respondent. Section 19(f) reads as under:

**"19. Residence Order.-**

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person *as enjoyed by her in the shared household* or to pay rent for the same, if the circumstances so require".

30. Learned Magistrate has directed the petitioner No. 1 (husband) to provide accommodation to the respondent (wife) 'with him at Jalandhar where he is reportedly putting up'. It appears as if the petitioner No. 1 has been directed to keep the respondent with

him in the accommodation he is using at Jalandhar. It needs to be pointed out in this relation that section 19(f) contemplates 'alternate accommodation' of the level as enjoyed by the aggrieved person in the 'shared household' or to pay rent for the same. What sort of accommodation should be granted under section 19(f) and whether the respondent can be compelled to accommodate the applicant with him are the questions to be considered while granting relief of accommodation? I, however, would leave this question for the consideration of the learned Magistrate for the reason that such questions were not raised at the time of hearing of this case before this Court.

31. For the aforementioned, the application made by the respondent insofar as it relates to petitioners Nos. 4 and 5 is quashed. Order dated 27.01.2014 to the extent of grant of *ex parte* interim relief is also quashed keeping it open for the learned Magistrate to pass fresh interim order after hearing both the sides. Petition to the extent of quashing the application qua petitioner Nos. 1 to 3 is dismissed.
32. Petition disposed of accordingly. A copy of this order be sent to the trial court.

**(Janak Raj Kotwal)**  
**Judge**

Jammu  
21.10.2014  
Rakesh