

HIGH COURT OF JAMMU & KASHMIR
AT JAMMU

CRMC No.455/2018 & IA No.1/2018

Date of order: 29.03.2019

Rattan Lal and ors

vs.

Ekta Kumari

Coram:

Hon'ble Mr. Justice Sanjay Kumar Gupta, Judge

Appearing counsel:

For petitioner(s) : Ms. Monika Kohli, Advocate

For respondent(s) : Ms. Deepika Singh Rajawat, Advocate

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| i) | Whether approved for reporting in Law Journals etc.: | Yes/No |
| ii) | Whether approved for publication in Press: | Yes/No |

1. In the instant petition filed under Section 561-A Cr.P.C., the petitioners *inter alia* seek quashment of the petition titled **Ekta Kumari vs Manoj Kumar and others** filed by the respondent under Section 12 and 23 of the Domestic Violence Act, 2010, along with all the proceedings pending before learned Judicial Magistrate Sub Registrar Jammu by virtue of which trial court has taken cognizance of the complaint for commission of offence under Section 12 and 23 of the Domestic Violence Act, 2010, on the following grounds:

- i) That the perusal of both the petitions i.e petition under section 488 and application under Domestic Violence Act would clearly reveal that the respondent has misled the Hon'ble Courts by filing false affidavits and has resorted to falsehood and lies and as such the Hon'ble Court may proceed against her for contempt of court and also perjury as she has polluted the stream of administration of justice system and therefore does not deserves equity. The respondent has stated two different versions in two different petitions which clearly reveal her conduct and intentions. The respondent has not only cheated and deceives the

petitioners but has also cheated the Hon'ble Courts by misleading the Hon'ble Courts just to extract money from the petitioner no.3 and to harass the petitioner nos.1 and 2.

- ii) That the respondent in petition u/s 488 has specifically mentioned that the parents of the respondent had given considerable dowry/gifts after marriage to the respondent within their resources except furniture and other electronic items as the marriage was solemnized in no time. The parents of the respondent told the petitioners that they will provide all the left out items within few days and in her application in domestic violence the respondent has stated that "... It is relevant to mention herein that the petitioner and the respondent no.1 married after 8 years of their courtship. Parents of the petitioner opposed the said marriage and to marry the respondent no.1, petitioner left leave all her relatives and her parents too. She went against them and married the respondent no.1..." Both these statements are self contradictory and clearly show that the respondent has concocted a false story just to harass the petitioners, the fact of the matter is that the respondent never ever came to the matrimonial house i.e., the house of the petitioner Nos.1&2 as the said marriage was never revealed to either of the parents.
- iii) That the petitioner no.1&2 have never ever stayed with the respondent as such there is no domestic relationship existing between the two. As per the definition of aggrieved person as defined in the Act section 2 (a), the aggrieved person means any person 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. Here the respondent has never ever stayed with the petitioners as such the does not fall in the preview of this definition of being aggrieved person. Hence the application is liable to be dismissed. Further, domestic relationship as defined under Section 2(f) means a relationship between two persons who live or have to 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. Here the respondent and the petitioners have never ever lived together so there is no domestic relationship existing between the petitioners and the respondent. It is further submitted that there is not even a shared household between the petitioners and the respondent. It is as such clear that since there is no domestic relationship so the question of any domestic violence as alleged does not arise at all.
- iv) That the respondent in the year 2017 has filed a false and frivolous complaint against the petitioners under section 12 of J&K Protection of Women from Domestic Violence Act, 2010 which is pending before the court of learned Judicial Magistrate Sub Registrar Jammu.

- v) That the orders impugned passed by the learned Magistrate are illegal as being clearly violative of the express procedure laid down by the J&K Protection of Women from Domestic Violence Act, 2010 and Rules.
- vi) That the procedure adopted by the learned Magistrate is clearly against the express provisions of the J&K Protection of Women from Domestic Violence Act, 2010 and Rules.
- vii) That the vague exparte order was passed against the petitioner without being provided opportunity of being heard.
- viii) That the orders impugned not only depicts non-application of mind on part of the learned Magistrate but also are in clear violation of the express provisions of the J&K Protection of Women from Domestic Violence Act, 2010.
- ix) That against the provisions of the J&K Protection of Women from Domestic Violence Act, 2010 and mandate of law the mother of the petitioner no.3 has been made party in the complaint.
- x) That the trial magistrate has treated the application filed by the respondent like any other complaint and has acted in a very routine and casual manner while dealing with the application of the respondent.
- xi) That the orders passed by the learned Magistrate are purely based on factual scenario as presented in the Court by the respondent herein before the learned trial Magistrate.
- xii) That no such incident of Domestic Violence has ever occurred as stated by the respondent and the application filed before the learned Sub Registrar, Jammu is based on concocted story as such the same is liable to be quashed. It is crystal clear that the respondent has filed the above said application with malafide intention and in order to extract the money from the petitioners and to grab the property of the petitioners, as such in order to prevent abuse and misuse of process of law with a view to secure ends of justice impugned complainant deserves to be quashed.
- xiii) That the said complaint filed by the respondent is not sustainable in the eyes of law as the affidavit filed by the respondent is not as per the prescribed format given under the provisions of Domestic Violence Act, 2010.

2. I have considered the contentions of counsel for parties.

3. Counsel for petitioner has reiterated all grounds taken in memo of petition and has relied upon judgment of Punjab and Haryana High Court passed on 31.5.2016 in case titled **Amit Agarwal and others Vs. Sanjay Aggarwal & others (Crl. Misc. No.M-36736 of 2014 (O&M)**, wherein it is held that once domestic relationship has come to an end, petition under D.V. Act is liable to be quashed; judgment of Punjab and Haryana High court passed on 01.04.2015 in case titled **Jasvir Kaur & anr. vs. Manpreet Kaur (CRM No.M-29792 of 2011 (O&M)**, wherein it is held that wherein criminal proceeding are manifestly attended with malafide, or has been maliciously instituted, then it is required to be quashed. Whereas counsel for respondent has stated that this petition is not maintainable as petitioners have neither appeared before court below nor have filed any objections; further order impugned is appealable under Act and petitioners without availing that opportunity have filed the present petition.
4. I have given my thoughtful consideration to whole aspects of the matter.
5. It would be relevant to reproduce the relevant paras of the complaint filed by the respondent before the trial court as under:

“Incidents of Domestic Violence:

(A) PHYSICAL ABUSE

The petitioner is a legally wedded wife of the respondent No.1. Their marriage was solemnized on 01.05.2015 in accordance with Hindu rites and customs at Aarya Samaj Mandir, Janipur Jammu. Copies of their marriage certificate issued by Aarya Samaj Mandir and Marriage Agreement duly attested by the Notary Public, Jammu is enclosed herewith and marked as Annexure-A for the kind perusal of this Hon'ble Court.

It is relevant to mention herein that the petitioner and respondent No.1 married after eight years of their courtship. Parents of the petitioner opposed the said marriage and respondent No.1, petitioner left leave all her relatives and her parents too. She went against them and married the respondent No.1. It is relevant to mention herein that soon after their marriage, the petitioner joined the society/company of the respondent No.1 at the shared household i.e., Raya Pati Samba as Hindu cultured wife and started performing all her matrimonial obligations towards the respondents. It was after very fifteen days of their marriage, the respondent No.1 who is working in Border Security Forces (BSF) as Constable and is presently posted at BSF Paloura left for Srinagar as at that time he was posted there.

Immediately after his leaving for Srinagar, the respondent No.2 and 3 changed their behavior towards the petitioner and started treating her with cruelty for not bringing dowry. She was told by them to leave their house. The petitioner who had left everyone for marrying the respondent No.1 was taken aback to see the changed colours of her in-laws. She was virtually thrown out by respondent No. 2 and 3 in the absence of respondent No.1.

Petitioner somehow developed contact with respondent No.1 and narrated the said incident to him. She told him how she was thrown out by his parents from the shared household.

The respondent No.1 who was/is bound to protect her interests didn't come to her rescue, he rather told her to manage something by her own which was very harsh/unbecoming on her part.

Despite all this, the petitioner kept on calling the respondent No.1 and thought good sense may prevail upon him and they would again start living together but all in vain.

On 24th December' 2015, petitioner came to know from someone that the respondent No.1 has come on leave. The petitioner mustered courage to go her matrimonial home to meet the respondent No.1 as he had stopped answering her phone calls. There at her matrimonial home, she was badly beaten up and verbally abused by respondent No.1,2 and 3. She was threatened by respondent No. 2 and 3 of dire consequences if she would not leave the respondent No.1. They categorically told her to leave their home as they want to solemnize their son's marriage with a girl who would get sufficient dowry for them. The petitioner since then is putting up with her relatives at her above given address.

It is relevant to mention herein that even after getting mercilessly beaten up the respondents on 24th December, 2015, the petitioner remained mum and didn't report the incidents of domestic before any

forum. She did it to protect her relation with respondent No.1 as the didn't want to lose him.

Whereas, the respondent No.1 didn't care for her, even after being in courtship with her for eight years, he did not stand by her when she was thrown out by his parents from shared house hold. Perhaps he married the petitioner to play with her emotions. As has been mentioned above that it was after very fifteen days of their marriage, he left her and withdrew from her company. He has virtually exploited the petitioner and ruined her life.

The petitioner is presently not having any source to approach to seek shelter. She is running from one corner to another in search of place where she is safe and on the other hand, the respondent No.1 is living a comfortable life. He is not bothered for the welfare of his legally wedded wife who is entirely his responsibility.

(B) VERBAL AND EMOTIONAL ABUSE

The respondent No.1, 2 and 3 have been accusing the petitioner of having bad character. She has been accused of having an extra marital affair which is completely false. The petitioner belongs to a very poor family and has worked a domestic help when she was maiden.

The respondent No. 1 on the provocation of the respondent no.2 and 3 has withdrawn from the company of the petitioner. She was emotionally and verbally abused for being a maid. She was also ridiculed for not getting sufficient dowry at the time of marriage which was utter humiliation to the petitioner. It is apt to mention herein that despite repeated requests the respondent No. 1 is not ready to stay with the petitioner/reunite with the petitioner whereas the petitioner still wants to go back to him.

(C) ECONOMIC ABUSE

The petitioner has also been subjected to the acute economic violence/cruelty as well by the respondent No.1. The respondent No.1 despite being a man of means has been willfully neglecting the petitioner from maintaining her. Presently the respondent No.1 who is working in BSE as constable and is posted at BSF Paloura, Jammu is approximately paid Rs.40,000/- as monthly salary. The respondent No.1 has not been providing the basic necessities of life such as food, shelter, clothes and medicines etc to the petitioner. He has been so cruel to the petitioner that even after making repeated requests for seeking maintenance, he has willfully neglecting her.

The respondent No.1 is a person of sufficient means and on the other hand the petitioner who is a house wife has no independent source of income to earn/support her livelihood.

Petitioner's relatives are no more interested in keeping her in their house. She is bound/compelled to shift to some other place. It is apt to mention herein that the petitioner is not in a capacity to take accommodation on rent and stay there as she would not be in a position to pay the rent of the same. The monthly expenses of petitioner including food, shelter, clothes medication and other miscellaneous expenses are not less than Rs.30,000/-. In the absence of financial support from the respondent No.1, she has been begging for her survival since the day she was thrown out from the matrimonial house by the respondents. The lady is virtually facing starvation and is prone to all sort of exploitation. It is the respondents who are responsible for the miserable/pathetic condition of the petitioner they have dealt her with utmost mental, physical and emotional cruelty.”

6. The court below on the basis of contents of above petition took cognizance and passed the order on 29.03.2017. The operative part of the order impugned is reproduced as under:

“As complainant is on affidavit and on the basis of documents placed/filed, she has made out a prima facie case for the grant of interim relief. As such respondents are prohibited from entering in the accommodation of the petitioner and respondents are also directed to stay away from the petitioner, SHO is directed to ensure that no harm is caused to petitioner in the hands of respondents, respondent no.1 is directed to provide one room and kitchen at the shared household or in the alternate accommodation to the petitioner at Jammu or pay the rent of the accommodation that she would take on rent or is taken on rent for her and respondent is directed to pay Rs.5000/-per month to the complainants as maintenance and also prohibited from causing injury, mental torture, mental distress etc till final disposal of this application. Office is directed to issue notice to respondent for appearance and for filing objections. Put up on 25.04.2017.”

7. The Jammu and Kashmir **Protection of Women from Domestic Violence Act** has been enacted to protect women from domestic violence. The “domestic violence”, with this definition being broad and including not only physical violence, but also other forms of violence such as emotional/verbal, sexual, and economic abuse. It is a civil law meant primarily for protection orders and not meant to penalize criminally. Domestic violence as defined in section 3 of the Act as any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it:
1. harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
 2. harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
 3. has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
 4. Otherwise injures or causes harm, whether physical or mental, to the aggrieved person.”
8. In this we can say that The Jammu and Kashmir Protection of Women from Domestic Violence Act 2010 has been legislated for more effective protection of the rights of women guaranteed under constitution, who are victim of violence.
9. Section 12 of Act empowers victim to file a petition before Magistrate regarding domestic violence; section 18 deals with passing of protection order; section 19 deals with passing of

residence order; section 20 deals passing of monetary order; section 21 deals with passing of custody order and section 22 deals with compensation order. These types of order can be passed/ granted by Magistrate after hearing and finally deciding the application under sections 12 of Act.

10. Section 23 of Protection of Women from Domestic Violence Act, 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, as the case may be, section 22 against the respondent.

11. From bare perusal of this section, it is evident that Section 23 of Act empowers the magistrate to pass any such interim order as he deems just and proper; and he can also grant ex-parte interim relief/s as magistrate deems just and proper during pendency of application under section 12 of Act, when he finds 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.** The purpose of this section is to save the victim from vagrancy, continuous harassment,

dispossession of victim from place of residence or share hold, alienation of such place of residence or shared household etc. 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, as the case may be.

12. Hence, it is clear from the provision of section 23 of Domestic Violence Act that the Trial court may pass an ex-parte order; and also order of ad-interim on the basis of the affidavit of the aggrieved person upon prima facie disclosure of the fact that the respondent is committing or has committed the act of Domestic Violence or that there is likelihood that the respondent may commit an act of Domestic Violence. But for passing such relief court has to come to definite conclusion that, applicant has prima facie case that domestic violence has been committed or there is likelihood that respondent/s may commit domestic violence.
13. Section 28 of Act states that all proceedings under section 12, 18, 19, 20, 21, 22, 23 and section 31 of Act shall be governed by provisions of Cr.P.C.; sub section (2) of section 28 of Domestic Violence Act gives the power to the trial court to lay down its own procedure for disposal of an application under sections 12 and 23 of Domestic Violence Act.

14. While going through impugned order, I am of the considered opinion that court below has recorded subjective satisfaction before passing the order impugned on the basis of pleadings of respondent supported with affidavit.
15. The discretion of magistrate at the time of passing order under section 23 of Act solely rests upon the contents of complaint; petitioners have challenged the order impugned on the grounds, which they have never taken before court below by filing objections. This court, thus, cannot set aside the order impugned and order of taking cognizance on the basis of grounds taken in this petition for the first time. Any order passed by Magistrate in ex-parte under section 23 of Act is not final order; it is always subject to alteration and can be set aside after the magistrates comes to conclusion after hearing the other party and going through the objections, if any, filed by other side that order has been obtained by mis-representation of facts or complaint was vexatious.
16. The ground taken in the petition that respondent has taken two contradictory pleas of same fact in two different petitions; one under 488 Cr.P.C., and another in complaint under section 12 of D.V. Act, is not tenable. Because petitioners herein have never brought this fact into the knowledge of court below by filing objections to petition filed under section 12 of D.V. Act. Relationship of respondent with petitioner no.3 as wife and husband has not been denied by petitioners. Another ground taken is that petitioner no.3 was compelled by respondent to enter into marriage agreement against the wishes of families of both parties

and said marriage existed in papers only and respondent never came to their house for residing. This is factual plea which is required to be decided during trial by leading evidence. Rest petitioners have raised disputed question of facts in these petition, which require detail evidence and its appreciation, which this court cannot consider in this petition. It is not the case of petitioners that, there is some legal bar engrafted in any Act for magistrate to take cognizance.

17. Hence without commenting on merit of case, this petition is disposed of thereby directing the petitioners to take all grounds taken in this petition, before court below by filing objections. Stay, if any, is vacated. Petition is **disposed of** accordingly.

(Sanjay Kumar Gupta)
Judge

Jammu:
29.03.2019
Vijay