

Court No. - 19

Case :- APPLICATION U/S 482 No. - 2288 of 2022

Applicant :- Smt. Mamta And Another

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home And Others

Counsel for Applicant :- Rishad Murtaza, Aishwarya Mishra, Syed Ali Jafar Rizvi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh, J.

1. Heard Shri Rishad Murtaza, learned counsel for the applicants, Shri Aniruddha Kumar Singh, learned A.G.A. for the State and Ms. Madhulika Yadav, learned counsel for the private respondent nos. 2 to 5.

2. This application has been filed seeking quashing of the order dated 03.03.2022 passed by Additional Chief Judicial Magistrate V, Lucknow, whereby Domestic Incident Report has been called for. A further prayer has been sought to direct the court concerned to proceed in Complaint Case No. 557 of 2022 under the Protection of Women from Domestic Violence Act.

3. Learned counsel for the applicants submitted that the marriage of applicant no. 1 was solemnized with respondent no. 2 as per the Hindu Rites on 17th June, 2017 and out of their wedlock, applicant no. 2 was born, who is at present in the care and custody of applicant no. 1 (mother). Respondent nos. 3 to 5 are the mother-in-law, brother-in-law and sister-in-law respectively. It has further been submitted that applicant no. 1 was ousted from her matrimonial house by respondent nos. 2 to 5 on 1st October, 2020, when she was carrying the pregnancy of almost 7 months of applicant no. 2. Later on, applicant no. 2 born in Fatima Hospital, Lucknow. It has also been submitted that since the private respondents were not taking care of the applicants, applicant no. 1 made complaint in local police station, but no assistance was provided to her from the local police. Thereafter, she preferred application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'Act, 2005') in the court of ACJM V, Lucknow, which was registered as Complaint Case No. 557 of 2022. Submission of the learned counsel for the applicants is that in place of issuing

notice on the aforesaid application, the Presiding Officer called for the report of Protection Officer, i.e., Domestic Incident Report (for short 'DIR') and fixed the matter for 3rd March, 2022. As the report of the Protection Officer was not received, the applicants, while relying on the decision of this Court in the case of *Manoj Kumar yadav Vs. State of U.P. & Ors.* (Appilcation u/s 482 Cr.P.C. No. 2384 of 2020), moved application to the court below to proceed without calling for the DIR. However, the court below vide impugned order dated 3rd March, 2022, in spite of issuing notice to the respondents, dismissed the said application with the order for calling the report of Protection Officer.

4. It has been submitted by the learned counsel for the applicants that the DIR is not mandatory for adjudicating the matter under Section 12 of the Act, 2005. It has further been submitted that this controversy has already been decided by the Hon'ble Apex Court in the case of **Prabha Tyagi Vs. Kamlesh Devi, (2022) SCC Online SC 607**. It has, thus, been submitted that indulgence of this Court is necessary. The impugned order dated 03.03.2022 is liable to be set aside and the court below may be directed to proceed in the matter and conclude the same expeditiously.

5. Learned A.G.A. as well as learned counsel for the complainant vehemently opposed the prayer of the applicants and submitted that without DIR of Protection Officer, the correct picture of the incident will not be clear to the court below and, therefore, there is no illegality in the impugned order passed by the court below by calling for the DIR. However, they have no objection if the court below is directed to proceed in the matter expeditiously.

6. Considering the arguments advanced by the learned counsel for the applicants, learned A.G.A. as well learned counsel for the private respondents and going through the impugned order and other relevant documents, it is undisputed fact that the complaint under Section 12 of the Act, 2005 was filed on 25th January, 2022 and the court concerned called for the DIR from the Protection Officer and fixed the matter for 3rd March, 2022. It is also undisputed that since the report was not made available, another application was moved by the applicants with the prayer to proceed in the matter and issue notice to the private respondents, but the court below rejected the said applicant and called for the DIR.

7. Hon'ble Apex Court in the case of **Prabha Tyagi** (supra) has already answered the issue, whether before proceeding in the matter, the DIR is mandatory or not under the provisions of the Act, 2005 in order to invoke the

substantive provision of Sub-sections 18 to 21 and 22 of the Act, 2005. The Hon'ble Supreme Court held that Section 12 of the Act, 2005 does not make it mandatory for a Magistrate to consider the DIR filed by the Protection Officer or the Service Provider before passing any order under the Act, 2005. It has also been clarified that even in absence of DIR, the Magistrate is empowered to proceed ex parte and pass interim as well as final order under the provisions of Act, 2005.

8. Relevant portions of the judgment of **Prabha Tyagi** (supra) are quoted hereinbelow:

"25. The submissions of the learned *amicus curiae* counsel for the respective sides were on the following points for consideration which were raised *vide* order dated 11th February, 2022:

"(i) Whether the consideration of Domestic Incident Report is mandatory before initiating the proceedings under D.V. Act, in order to invoke substantive provisions of Sections 18 to 20 and 22 of the said Act?

(ii) Whether it is mandatory for the aggrieved person to reside with those persons against whom the allegations have been levelled at the point of commission of violence?

(iii) Whether there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed?"

Legal Framework:

26. For an easy and immediate reference, the following provisions of the Protection of Women from D.V. Act are extracted as under:

"2. **Definitions.**—In this Act, unless the context otherwise requires,—

(a) 'aggrieved person' means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

x x x

(e) 'domestic incident report' means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person;

(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, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

x x x

(s) 'shared household' means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a house hold whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household."

"3. Definition of domestic violence.—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

(a) 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

(b) 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

(c) 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

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. Explanation I.—For the purposes of this section,—

(i) 'physical abuse' means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) 'sexual abuse' includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) 'verbal and emotional abuse' includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested;

(iv) 'economic abuse' includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to,

house hold necessities for the aggrieved person and her children, if any, *Stridhana*, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her *Stridhana* or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes 'domestic violence' under this section, the overall facts and circumstances of the case shall be taken into consideration."

x x x

"12. Application to Magistrate.—(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

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.

(2) The relief sought for under Sub-Section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Civil Procedure Code, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under Sub-Section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall Endeavour to dispose of every application made under Sub-Section (1) within a period of sixty days from the date of its first hearing."

x x x

“17. Right to reside in a shared household.— (1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.”

x x x

“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.”

59. We are, therefore, of the view that the High Court was not right in holding that the application filed by the appellant herein was not accompanied by a Domestic Incident Report and therefore under the proviso to Sub-Section (1) of Section 12 of the D.V. Act, the Magistrate had no authority to issue orders and directions in favour of the appellant.

(i) Following are the judgments where the High Courts have held that the Domestic Incident Report is not a *sine qua non* for entertaining or deciding the application under Section 12 of the D.V. Act by the learned Magistrate.

a) In *Nayanakumar v. State of Karnataka*, [[ILR 2009 Kar 4295](#)], the High Court of Karnataka (Kalaburagi Bench) while dealing with Section 12 of the D.V. Act, held that in case a Domestic Incident Report is received by the Magistrate either from the Protection Officer or from the Service Provider, then it becomes obligatory on the part of the Magistrate to take note of the said Domestic Incident Report before passing an order on the application filed by the aggrieved party. It was further clarified that the scheme of the D.V. Act makes it clear that it is left to the choice of the aggrieved person to go before the service provider or the Protection Officer or to approach the Magistrate under Section 12 of the D.V. Act.

b) In *Abhiram Gogoi v. Rashmi Rekha Gogoi*, [[\(2011\) 4 Gau LR 276](#)], the Gauhati High Court held that Section 9(1)(b) of the D.V. Act makes it clear that it is the duty of the Protection Officer to make a Domestic Incident Report to the Magistrate upon receipt of a complaint of domestic violence and forward copies thereof to the police officer-in-charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area.

c) In the case of *Md. Basit v. State of Assam*, [[\(2012\) 1 Gau LR 747](#)], the Gauhati High Court differed with the view taken by the

Madhya Pradesh and Jharkhand High Courts and held that Section 12 only contemplates as to who can file a complaint under Section 12 of the D.V. Act, what relief may be sought for, what the contents of the complaint must be and how the complaint ought to be examined. That if the complaint conforms to the said pre-conditions, the same may be taken cognizance of. The High Court noted that an application under Section 12(1) of the D.V. Act may be filed either by an aggrieved person herself, or by a Protection Officer. The Court went on to hold that the provision does not require a Magistrate to specifically call for a Domestic Incident Report. That it would only be mandatory to consider such report, if the same had been filed by the Protection Officer before the Magistrate. The Gauhati High Court differed with the view taken by the Madhya Pradesh and Jharkhand High Courts, to the extent that the latter Courts observed that the Magistrate would not be obligated to consider the Domestic Incident Report even if the same was filed by the Protection Officer.

d) Delving on the same issue, the High Court of Himachal Pradesh in *Rahul Soorma v. State of Himachal Pradesh*, [2012 SCC OnLine HP 2574], held that the purpose of the D.V. Act is to give immediate relief to the aggrieved person; therefore, it was wrong to suggest that the Magistrate has no jurisdiction to take cognizance of the application under Section 12 of the D.V. Act before the receipt of a Domestic Incident Report by the Protection Officer or the service provider.

e) Further, the High Court of Andhra Pradesh in *A. Vidya Sagar v. State of Andhra Pradesh*, [2014 SCC OnLine Hyd 715], rejected the contention of the petitioner therein that a domestic violence case can be instituted and taken cognizance of on the basis of the Domestic Incident Report only and not otherwise.

f) In its judgment in the case of *Ravi Kumar Bajpai v. Renu Awasthi Bajpai*, [ILR 2016 MP 302], the High Court of Madhya Pradesh speaking through J.K. Maheshwari, J., while discussing on the legislative intent of the D.V. Act, held that if the legislative intent was to call for a report from the Protection Officer as a precondition by the Magistrate to act upon a complaint of aggrieved person, then it would have expressed that intention emphasizing the words in the main section. The High Court relied on various judgments pertaining to the interpretation of a provision and proviso thereof.

g) The Division Bench of the High Court of Delhi in *Shambhu Prasad Singh v. Manjari*, [(2012) 190 DLT 647] speaking through Ravindra Bhat, J. dealt with the conflicting views of the two Single Judges on the question whether a Magistrate can act straightaway on the complaint made by an aggrieved person under the D.V. Act. It was held that Section 12(1) of the D.V. Act does not mandate that an application seeking relief under the said D.V. Act must be accompanied with a Domestic Incident Report or even that it should be moved by a Protection Officer. So also, Rule 6 which stipulates the form and manner of making an application to a Magistrate does not require that the Domestic Incident Report must accompany an application for relief under Section 12.

It was further held that an obligation to submit a Domestic Incident Report is imposed only on the Protection Officers under Section 9 of the D.V. Act and upon the service providers under Section 10 of the D.V. Act and the learned Magistrate 'shall' take into consideration, the Domestic Incident Report if it is filed and not otherwise.

h) In *Rakesh Choudhary v. Vandana Choudhary*, [2019 SCC OnLine J&K 512], the High Court of Jammu and Kashmir rejected the argument of the petitioner therein that the report of the Protection Officer is *sine qua non* for issuing process in a petition under Section 12 of the D.V. Act. The Court held that the proviso to Section 12(1) of the D.V. Act only stipulates that the learned Magistrate shall take into consideration the Domestic Incident Report filed by the Protection Officer or the Service Provider, but it does not stipulate that a report 'shall be called for' before any relief could be granted.

i) Further, the High Court of Bombay at Aurangabad Bench, while dealing with a criminal writ petition in the case of *Vijay Maruti Gaikwad v. Savita Vijay Gaikwad*, [(2018) 1 HLR 295], observed that if the matter is before the Court and the wife preferred not to approach the Protection Officer, the Court is not bound to call the report of Protection Officer.

j) Lastly, in the case of *Suraj Sharma v. Bharti Sharma*, [2016 SCC OnLine Chh 1825], the High Court of Chhattisgarh while expressing its view on Section 12 of the D.V. Act also held that the Domestic Incident Report shall not be conclusive material for making any order.

61. On an analysis of the aforesaid judgments from various High Courts, we find that the High Courts of Andhra Pradesh, Bombay, Delhi, Gauhati, Himachal Pradesh, Jammu & Kashmir, Karnataka, and Madhya Pradesh, are right in holding that if Domestic Incident Report has been received by the Magistrate either from the Protection Officer or the service provider then it becomes obligatory on the part of the Magistrate to take note of the said report before passing an order on the application filed by the aggrieved party, but if no complaint or application of domestic violence is received by the Magistrate from the Protection Officer or the service provider, the question of considering such a report does not arise at all. As already discussed, the D.V. Act does not make it mandatory for an aggrieved person to make an application before a Magistrate only through the Protection Officer or a service provider. An aggrieved person can directly make an application to the jurisdictional Magistrate by herself or by engaging the services of an Advocate. In such a case, the filing of a Domestic Incident Report by a Protection Officer or service provider does not arise. In such circumstances, it cannot be held that the Magistrate is not empowered to make any order interim or final, under the provisions of the D.V. Act, granting reliefs to the aggrieved persons. The Magistrate can take cognizance of the complaint or application filed by the aggrieved person and issue notice to the respondent under Section 12 of the D.V. Act even in the absence of Domestic Incident Report under Rule 5. Thus, the Magistrate has jurisdiction to take cognizance of the complaint under Section 12 of the D.V. Act in the absence of a Domestic Incident Report under Rule 5 when the complaint is not filed on behalf of the aggrieved person through a Protection Officer or service provider. Such a purposeful interpretation has to be given bearing in mind the fact that the immediate relief would have to be given to an aggrieved person and hence the proviso cannot be interpreted in a manner which would be contrary to the

object of the D.V. Act which renders Section 12 bereft of its object and purpose.

64. In view of the above discussion, the three questions raised in this appeal are answered as under:

“(i) Whether the consideration of Domestic Incidence Report is mandatory before initiating the proceedings under Domestic Violence Act, 2005 in order to invoke substantive provisions of Sections 18 to 20 and 22 of the said Act?”

65. It is held that Section 12 does not make it mandatory for a Magistrate to consider a Domestic Incident Report filed by a Protection Officer or service provider before passing any order under the D.V. Act. It is clarified that even in the absence of a Domestic Incident Report, a Magistrate is empowered to pass both *ex parte* or interim as well as a final order under the provisions of the D.V. Act.

“(ii) Whether it is mandatory for the aggrieved person to reside with those persons against whom the allegations have been levied at the point of commission of violence?”

9. As the controversy in question has already been decided by the Hon'ble Apex Court by holding that for proceeding in the case under Section 12 of the Act, 2005, the DIR of the Protection Office is not mandatory before passing any order.

In view of the above facts and circumstances as well as the law laid down by the Hon'ble Apex Court in the case of **Prabha Tyagi** (supra), it is evident that the court below has committed error in rejecting the application for expedite disposal of the case by the impugned order and calling for the DIR, in place of proceeding in the matter.

10. The impugned order dated 03.03.2022 is hereby set aside. The application stands allowed.

11. The court below is directed to proceed in the matter and conclude the same expeditiously, strictly in accordance with law and the principle laid down by the Hon'ble Apex Court in the case of **Prabha Tyagi** (supra), without giving any unnecessary adjournments to either of the parties.

July 15, 2022

VKS