

(2018) 12 J&K CK 0034

In the Jammu And Kashmir High Court

Case No : Miscellaneous Criminal Cases (CRMC) No. 127 Of 2018, IA No. 01 Of 2018

Arshad Iqbal @APPELLANT@Hash Nusrat Naz

Date of Decision : 14-12-2018

Acts Referred:

Code Of Criminal Procedure, 1898 — Section 561A
Jammu And Kashmir Protection Of Women From Domestic Violence Act, 2010 —
Section 12, 12(a), 23
Code Of Criminal Procedure, 1973 — Section 488
Protection Of Women from Domestic Violence Act, 2005 — Section 18, 19, 20, 21, 22,
23, 23(1), 23 (2), 28(2), 31

Citation : (2018) 12 J&K CK 0034

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : Arshad Pervaiz Malik

Final Decision : Dismissed

Judgement

1. Through the medium of instant petition filed under Section 561-A Cr. P.C, petitioner seeks quashing of application u/s 12(a) of J&K Protection of Women from Domestic Violence Act, 2010 titled "Nusrat Naz Vs. Arshad Iqbal and ors.", pending before the Court of learned Special Mobile Magistrate, Rajouri, being File No.56-A dated 20.09.2017 and subsequent proceedings thereof.

2. The facts of the case in nutshell are that the marriage between petitioner and respondent was solemnized in the month of April, 2015, in accordance with Muslim Shariat Law and out of the wedlock one male child, namely, Shahid Ashraf was born. Thereafter the petitioner and the respondent lived peacefully as husband and wife. After few months of the marriage, the respondent started quarrelling with the petitioner and his family members day in and day out without any rhyme and reason. The petitioner and his family members requested the respondent to mend her ways but she did not accede to their request. It is further stated that ultimately, the respondent left the company of the petitioner in the year 2016 and started living in her parental home. The petitioner and his

family members, on a number of times went to the parental house of the respondent to bring the respondent back to her matrimonial home, but the family members of the respondent refused to send the respondent back and told the petitioner to give divorce to the respondent. Thereafter, the petitioner divorced the respondent by way of Divorce Deed dated 04.11.2016 and the said deed was duly received by the respondent.

3. It is further stated in the petition that after lapse of few months, the respondent filed a petition under Sections 12 and 23 of the Domestic Violence Act, 2010 against the petitioner in the Court of learned District Mobile Magistrate (Traffic), Rajouri, on false and frivolous grounds despite the fact that the petitioner divorced the respondent by virtue of aforesaid Divorce Deed and has snapped all the ties with the respondent. Thereafter, the respondent filed another petition under Section 488 Cr.P.C. for grant of maintenance in the aforesaid Court against the petitioner and the learned trial court has also granted interim maintenance to the tune of Rs. 2000/- per month in favour of the petitioner No.2, namely, Shahid Ashraf in the said petition. It is further averred in the petition that the respondent once again filed a petition/complaint under Section 12 (a) of Domestic Violence Act against the petitioner and his family members before the Special Mobile Magistrate, Rajouri, on 20.09.2017 in order to harass the petitioner and his family members and the petitioner filed his response in the said petition in which the petitioner has stated that the respondent has earlier also filed a petition under Section 12(a) of Domestic Violence Act and two same petitions against the petitioner are not maintainable. But the Hon'ble Court has not appreciated the aforesaid fact.

4. The petitioner being aggrieved of the impugned petition/complaint and subsequent proceedings therein, has challenged the same on the following grounds:-

(a) That the impugned complaint and the subsequent proceedings arising therefrom is the abuse of the process of the law because the earlier complaint under domestic violence Act filed by the respondent against the petitioner is subjudice before the court below but during the pendency of the same the respondent has filed another petition on same facts which is against the law, facts and all canons of natural justice, as such, the impugned complaint and subsequent proceedings are liable to be quashed on this ground alone.

(b) That the impugned complaint and the subsequent proceedings arising therefrom is the abuse of the process of the law as the marriage between the two was admittedly solemnized in the year 2015 and it is also an admitted position that since 2016 both the parties are residing separately and the impugned complaint was filed before the court below after the divorce. Therefore, the impugned complaint is required to be quashed on this ground.

(c) That under the provisions of J&K Muslim Personal Law (Shariat) Application Act, 2007 the Muslim Personal Law has been made applicable to the Muslim in

the State of J&K. Under the Muslim Personal Law the Talaq (Divorce) becomes effective soon it is pronounced. The talaq was pronounced and duly communicated and received by the respondent and after the talaq the relations between the two cease to operate as both after the pronouncement of the talaq and its receipt by the respondent the petitioner and respondent are no more husband and wife. Since the respondent is not the wife of the petitioner in legal terms, therefore, the impugned complaint filed by her is not maintainable and is therefore required to be quashed along with all the subsequent proceedings arising out of the said impugned complaint.

(d) That the impugned complaint is abuse and misuse of the process of law and just to harass and to extract money from the petitioner with oblique motive, as such, the impugned complaint is bad in the eyes of law and is liable to be quashed.

5. The objections have been filed on behalf of the respondent, in which the respondent has taken a stand that the respondent has been facing domestic violence at her matrimonial home from the very beginning of her wedlock. It is stated that the respondent is not in a position to work, hence she is under financial crisis and is in need of emergent maintenance amount from the petitioner, being legally wedded wife of the petitioner and on no fault throughout from the wedded society and at present the respondent is residing at rental accommodation at Rajouri. It is further stated in the objections that the instant petition has been filed just to harass the respondent on the sole ground that two similar petitions under Protection of Women from Domestic Violence Act were filed against the petitioner before different Courts. It is urged that one petition was filed on 25.03.2017, which is now withdrawn by virtue of order dated 17.03.2018 and another petition was filed on 20.09.2017, which is sub-judice before the Special Mobile Magistrate, Rajouri, hence in view of the facts mentioned above, the instant petition deserves dismissal being infructuous. It is further stated that the respondent has approached before the trial court under Domestic Violence Act for seeking redressal of her grievance and monetary benefits for running her life smoothly along with her child. During the pendency of petition under Section 12 of J&K Protection of Women from Domestic Violence Act, 2010 before the Court of learned District Mobile Magistrate, Rajouri, the petitioner appeared before the Court and wanted to settle the dispute with the respondent, and on the assurance of the petitioner, the respondent was able to withdraw the said petition before the learned District Mobile Magistrate, Rajouri. When the mutual settlement between the petitioner and respondent, according to petitioner's assurance, not matured in a proper manner or on the ground reality, as the petitioner failed to fulfill the promise which he made during family settlement, the respondent again approached before the Hon'ble Court under J&K Protection of Women from Domestic Violence Act for redressal of her grievance.

6. I have considered the contentions of learned counsel for the petitioner.

7. In support of his contention, learned counsel for the petitioner has placed reliance upon the judgment of Karnataka High Court, rendered in case titled, "Sri. Annasaheb Appanna Kamble Vs. The State of Karnataka, passed on 05.03.2014 in Criminal Petition No. 11633/2011.

8. 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. 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. Section 23 of Protection of Women from Domestic Violence Act, empowers the Magistrate to grant ex-parte interim relief/s as Magistrate deems just and proper during pendency of application under section 12 of Act. Section 23 of Act consists of two parts; section 23(1) empowers Magistrate to pass ex-parte interim order during pendency of main petition under section 12 of Act; section 23 (2) empowers Magistrate to pass ad-interim order during pendency of interim petition under section 23(1) of Act.

9. 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 share 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.

10. Section 28 of Act states that all proceedings under section 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.

11. The only substantial ground taken is that second complaint u/s 12 of D.V. Act was not maintainable as first complaint was already pending.

12. At present there is only one petition under section 12 of D.V. Act pending as first petition has been withdrawn on 17.03.2018 by respondent. A specific plea has been taken that the petitioner herein appeared in first petition and wanted to settle the dispute and on his assurance she undertook to withdraw the petition; that due to in action on part of petitioner herein dispute was not settled and so she again filed fresh petition; that respondent under bonafide mistake thought

that the previous petition has been withdrawn, so she filed a fresh one.

13. As already held D.V. Act is social legislation and has been legislated for more effective protection of the rights of women guaranteed under Constitution, who are victim of violence. The strict law of pleading is not applicable. Second complaint on same facts cannot be dismissed on the ground that already first petition was pending at the time of filing second petition, especially when there is specific plea that under bonafide mistake respondent thought that first petition has been withdrawn on account of settlement. The law cited by counsel for petitioner is not applicable, because, it is pertaining to criminal complaint. The petition under section 12 of D.V. Act cannot be termed as complaint in clear terms. Petition means request for providing relief, whereas complaint as per section 4 (e) means allegations made orally or in writing to Magistrate for taking action under code against offender for commission of offence.

14. In view of above discussion, this petition is dismissed.