

(2018) 03 J&K CK 0045
In the Jammu And Kashmir High Court
Case No : 561_A No. 327 OF 2017

JAGBIR SINGH

APPELLANT

Vs

PARAMJEET KOUR

RESPONDENT

Date of Decision : 02-03-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 561A
Jammu & Kashmir Protection of Women from Domestic Violence Act, 2010 — Section 12

Citation : (2018) 03 J&K CK 0045

Hon'ble Judges : DHIRAJ SINGH THAKUR

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This petition has been filed under Section 561-A of Cr. P.C. for quashing of the complaint titled "Paramjeet Kour Vs S. Jagbir Singh", under

Section 12 of the J&K Protection of Women from Domestic Violence Act, 2010, filed by the respondent herein, pending before the Court of learned

Special Municipal Mobile Magistrate, Jammu in which the cognizance has been taken by the Court below.

2. Briefly stated that material facts are as under:-

3. A complaint came to be registered under Section 12 of the Jammu & Kashmir Protection of Women from Domestic Violence Act, 2010 before the

Court below. The Court on consideration of the complaint as also the affidavit annexed thereto and on being satisfied that prima facie a case had been

set up ordered payment of Rs. 7,000/- per month to the applicant/respondent with a further direction to the applicant that he would not create any third

party interests in respect of a shared residential H. No. 397, Gobindpura, Airport

Road, near Peer Baba Chatta, Jammu and other ancestral property.Â

4. The grounds of challenge as is reflected from the petition and as were urged at the time of hearing, are as under:-

a) The first ground is that before taking cognizance on the complaint, the Court below was required to ensure verification/ counter signature by the

protection officer, with a view to ensure the truthfulness of the complaint and, further that no domestic incidence report had ever been filed by the

protection officer in the present case, without which the Court could not have passed any order on the complaint.

b) The second ground urged is that the affidavit filed by the complainant was not in the prescribed format, as otherwise prescribed in the rules frames

under the Jammu & Kashmir Protection of Women from Domestic Violence Rules, 2011. It was urged that the Magistrate could have taken the

cognizance only if the affidavit was filed strictly in accordance with the format prescribed in Form-III of the rules supra.Â

5. Heard learned counsel for the parties.

6. Insofar as, the first ground of challenge is concerned, overwhelming reliance was placed by the learned counsel for the petitioner on the proviso to

Section 12 to urge that before passing any order on the complaint under Section 12, the Magistrate was required to take into consideration the

domestic incident report received by him either from the protection officer or the service provider.

7. On a reading of the proviso supra, it is clear that the same envisages the consideration of any â??domestic incident/report receivedâ?, by the

Magistrate from the protection officer or the service provider. The use of the word â??anyâ? is significant, inasmuch as, it signifies that the report is

required to be considered if at all any such report was ever filed with the Magistrate. In other words, in case no such report was filed, then the

Magistrate is not precluded in law in exercising his jurisdiction under Section 12 for purposes of taking cognizance in the absence of such report. I am

supporting the view taken by the coordinate Bench of this Court in case titled â??Rakesh Manhas and others Vs Aruna Manhasâ? 2015(1) JKJ 301.

In that view of the matter, insofar as, the first ground of challenge is concerned, the same is without any legal basis and is accordingly rejected.

8. The second ground urged was with regard to the affidavit not being totally compliant with the prescribed format of the affidavit, which was required to be filed in terms of Form-III in the Jammu & Kashmir Protection of Women from Domestic Violence Rules, 2011. On a perusal of the affidavit filed along with the application under Section 12 before the Court below, it becomes clear that all the material ingredients, which was otherwise required as per the format prescribed in Form-III of the rules along with complaint have been substantially complied with. The affidavit filed does reflect the name, marital status of the applicant as also the fact that the complaint had been drafted by the applicant's counsel on her instructions and material supplied by her. Not only this, the applicant also affirmed that the contents of the affidavit accompanying application were true and correct to the best of her knowledge and belief. The verification of the affidavit is totally in accordance with the rules prescribed. In fact, there is total compliance with the material requirements of Form-III, as prescribed under the Jammu & Kashmir Protection of Women from Domestic Violence Rules, 2011.

9. Hence, the order impugned, therefore, cannot not be held to be legally untenable or otherwise contravening any of the statutory provisions of the Jammu & Kashmir Protection of Women from Domestic Violence Act, 2010 or the rules framed thereunder.Â Â

10. For the reasons mentioned above, this petition is found to be without any merit and is, accordingly, dismissed along with connected MP.

11. Registry to send back the record forthwith.Â