

(2015) 04 RAJ CK 0157

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 1522 of 2015

Kundan Lal Arora and Others

APPELLANT

Vs

Preeti Arora and Others

RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Protection of Women From Domestic Violence Act, 2005 — Section 12, 12(4), 13

Citation : (2015) 04 RAJ CK 0157

Hon'ble Judges : M.N. Bhandari, J

Bench : Single Bench

Advocate : Mitesh Sharma, for the Appellant

Final Decision : Dismissed

Judgement

M.N. Bhandari, J.

1. By this petition, a challenge is made to the order dated 22.01.2015, whereby on receipt of the application under Section 12 of Protection of Women from Domestic Violence Act, 2005 (in short "Act of 2005"), notices were issued before a report from the protection officer.

2. Learned counsel submits that as per Section 12 of the Act of 2005, an order for issuance of notice can be passed after receipt of the report from the protection officer. In the instant case, notices have been issued without report from protection officer. It has been called simultaneously. In view of the above, impugned order be quashed. It is further stated that allegations have been made against the husband and not against father-in-law and mother-in-law, thus there was necessity to issue notice to the petitioners, thus for the aforesaid ground also, impugned order be set aside.

3. I have considered the submission made by learned counsel for petitioner and perused the record.

4. A reference of Section 12 of the Act of 2005 has been given, thus is quoted

hereunder:

"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 Code of Civil Procedure, 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."

5. The perusal of sub-section (1) of Section 12 of the Act of 2005 reveals that before passing any order on the application, the Magistrate shall take into consideration any domestic incident report received by him from the protection officer or the service provider. It would be relevant to refer Section 13 of the Act also which is quoted hereunder:

"13. Service of notice. - (1) A notice of the date of hearing fixed under section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.

(2) A declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved."

6. Section 13 provides about service of notice. If it is read along with Section 12(4), it reveals that on receipt of the application, the Magistrate shall fix the first date of hearing, which should not be beyond three days from the date of receipt of the application by the court. It further provides that notice of the date of hearing fixed under Section 12 shall be given by the Magistrate to the protection officer to get service by the mode prescribed on the respondents. Thereby service has to be effected on the first date of hearing to the respondents. It can be through the protection officer. It is not that for issuance of notice, report of protection officer should be available with the court. The word used in proviso to sub-section (1) of Section 12 does not show that issuance of notice would be an order passed under Section 12 of the Act of 2005. In view of the above, first argument made by learned counsel for petitioner cannot be accepted. It is moreso when proviso to sub-section (1) refers to incident report. It is not that in all the cases, the incident report should be sent first before issuance of notice rather words "any domestic incident report received by him" as referred in proviso means if the report is received, it would be taken into consideration by the court before passing of the order on an application under sub-section (1) of Section 12. Accordingly also, I do not find any substance in the first argument.

7. So far as second argument is concerned, perusal of complaint refers allegation against the petitioner also. Learned counsel for the petitioner conveniently ignored those allegations and referred only same allegations which exist against the husband. A complaint cannot be read in part but has to be seen in totality. The specific allegations against the petitioners have also been made, thus statement that no allegation exist against the petitioners is not correct. Thus second argument raised by learned counsel for petitioner is contrary to what has been stated in the application. It is to mislead the court. In view of the above, I do not find any ground to cause interference in the impugned order.

8. The petition is accordingly dismissed.