

(2017) 02 MP CK 0223
In the Madhya Pradesh High Court
Case No : 5164 of 2016

Mohanlal Agrwal

APPELLANT

Vs

Anwar Ulhak, & Ors.

RESPONDENT

Date of Decision : 01-02-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Protection of Women From Domestic Violence Act, 2005](#), [Section 31](#), [Section 20](#)

Citation : (2017) 02 MP CK 0223

Hon'ble Judges : Alok Verma

Bench : Single Bench

Advocate : Kashu Mahant, Peeyush Jain, Swati Ukhale

Judgement

1. This is an application under Section 482 Cr.P.C.
2. The brief facts necessary for disposal of this application are that respondent No.2, who is wife of the present applicant, filed an application under Section 31 of The Protection of Women from Domestic Voilence Act, 2005 (hereinafter referred as Act), on 15.07.2013, to compel the applicant to obey the order passed by learned Magistrate in Miscellaneous Judicial Case No.31/2013 dated 15.07.2013, by which the learned Magistrate ordered him to pay Rs.1,500/- per month as monetary relief to respondent No.2. When the present applicant failed to pay the amount, the aforesaid application under Section 31 of the Act was filed.
3. The learned Magistrate by impugned order dated 15.03.2014 took cognizance under Section 31 of the Act, and ordered thatailable warrant be issued against the present applicant.
4. Aggrieved by this order, present application is filed on the grounds inter alia that under Section 31 violation of any protection order issued under Section 18 of the Act is an offence and so far as the monitory relief is concerned, which is

granted under Section 20 of the Act, action cannot be taken against the present applicant under Section 31 of the Act.

5. According to learned counsel for the applicant violation of any order granting monitory relief is not covered under the provisions of Section 31 of the Act, and therefore, the order passed by learned Magistrate is against the provisions of law. Learned counsel for the applicant relies on judgment passed by co-ordinate Bench of this Court in M.Cr.C. No.11416/2014 Surya Prakash Vs. Smt Rachna dated 11.09.2015 whereby, after discussing the provisions by the Act in detail, the bench framed following three questions for reference to a larger Bench:- Resultantly, I deem it proper to refer this matter to be place before Hon"ble the Chief Justice with a recommendation to place it before a Larger Bench. The larger Bench may deal with following questions:-

(i) Whether non-payment of maintenance allowance can be treated to be a breach of "protection order" or " interim protection order"? If it is not a breach of said orders, whether Section 31 of the DV Act can be invoked.

(ii) Whether any other breach or any provision of the DV Act, which does not fall within the ambit of "protection order" or " interim protection order" can be a basis to invoke Section 31 of th Act.

(iii) Whether the order passed in Sunil @ Sonu Vs. Sarita Chawla (Smt.), reported in 2009 (5) MPHT 319, is in accordance with the scheme of DV Act.

6. In this case, the case of Sunil @ Sonu Vs. Sarita Chawla (Smt.), reported in 2009 (5) MPHT 319, also referred to by the respondent was considered in detail, and thereafter, the Bench took different view and referred matter to a larger Bench.

7. Learned counsel for the respondent however, mainly relies on the judgment of co-ordinate Bench of this Court in case of Sunil @ Sonu (supra) and submitted that even violation of monitory relief granted to the applicant under Section 12 of the Act, is punishable under Section 31 of the Act, and proceedings can follow under Section 31 of the Act. Learned counsel for the respondent submitted that matter has been referred to larger Bench. Till decision of larger Bench the law laid down by the earlier Bench should be followed. He prays that under Section 31 of the Act is maintainable, and therefore, no interference should be made in the impugned order.

8. On inquiry, I find that order passed in M.Cr.C. No.11416/2014 by which the learned single Bench of this Court requested the hon"ble Chief Justice to refer the matter to a larger Bench was accepted by hon"ble Chief Justice of this Court and the matter is now pending before the Division Bench in M.Cr.C. No.16718/2015. The matter was last listed on 20.01.2017. Accordingly, it is apparent that the matter is still pending before the Division Bench of this Court. As per the law laid down by full Bench of this Court, till decision of the larger bench, the law laid down in earlier order should be followed.

9. However, in the facts and circumstances of the present case, in case, the Magistrate proceeds against the present applicant under Section 31 of the Act, he would face criminal charge and the effect would be irreversible. This apart going through the order passed by co-ordinate Bench of this Court in case of Surya Prakash (supra) and also in case of Sunil @ Sonu (supra), I find that law laid down in order passed in M.Cr.C. No.11416/2014 appears to be more in line with provisions of the Act. Accordingly, in my considered opinion, in this case the proceedings under Section 31 of the Act should remain stayed till decision by Division Bench of this Court in M.Cr.C. No.16718/2015.

10. So far as recovery of maintenance allowance granted to the respondent is concern, the respondent is at liberty to recover the amount under relevant provisions of Cr.P.C.

11. In this view of the matter, this application is disposed of. It is directed that the proceedings in Miscellaneous Judicial Case No.74/2011 pending before Judicial Magistrate First Class, Dewas shall remain stayed till decision in M.Cr.C. No.16718/2015. Meanwhile, it is directed that respondent is at liberty to recover the amount of maintenance of award to her under a relevant provisions of Cr.P.C.

12. With observation and directions as aforesaid, the matter stands disposed of.