

(2012) 05 SHI CK 0037

In the High Court Of Himachal Pradesh

Case No : Criminal M.M.O. No. 268 of 2011

Rahul Soorma and Others

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 01-05-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 482

Protection of Women From Domestic Violence Act, 2005 — Section 10(2), 12, 18, 19, 2(a)

Citation : (2012) CriLJ 2782 : (2013) 1 DMC 183

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Advocate : Pradeep Chowdhary, Inderjeet Singh Narwal, for the Appellant;
Ruma Kaushik, Addl. A. G., J.S. Rana, Asst. A. G., for the Respondent

Judgement

Kuldeep Singh, J.—This petition u/s 482, Cr.P.C. read with Article 227 of the Constitution of India has been filed for setting aside, quashing summoning order dated 25.05.2011 in Domestic Violence Act Case No.7 of 2011 and complaint pending before the Judicial Magistrate Ist Class (I), Hamirpur. Briefly stated the facts are that petitioner No. 1 and respondent No.2 wanted to marry, but father of respondent No.2 was against the marriage. He even threatened to end the life of the petitioner and his family members. The marriage of petitioner No. 1 and respondent No.2, however, was solemnized at "Araya Samaj Mandir, Hanuman Mandir". New Delhi, on 09.05.2010 as per Hindu rites. The marriage of petitioner No. 1 and respondent No.2 was against the wishes of family members of respondent No.2. At the time of marriage, members of family of petitioner No. 1 were present, but no-one was present from the family of the respondent No.2.

2. The petitioner No. 1 and members of his family received constant threats from the members of family of respondent No.2. The members of family of the petitioner No. 1 on 12.05.2010 filed CrI. Misc. No. 3049 of 2011 in the Delhi High Court. The respondent No.2 lived happily in her matrimonial home. The

respondent No.2 had been undergoing B.D.S. Course from Rajasthan. The petitioner No. 1 paid course fee of respondent No.2.

3. The members of family of respondent No.2 in a well planned conspiracy invited petitioner No. 1 and respondent No.2 at Nandanheri, Kotkhari, District Shimla, to attend some function which was to be held on 08.12.2010. The petitioner Nos. 2 and 3 attended that function, but petitioner No. 1 could not attend that function due to his final examinations. The respondent No.2 did not accompany petitioner Nos. 2 and 3. On return, she contacted her maternal aunt and uncle. The respondent No.2 had undergone abortion in Rippon Hospital with the help of her aunt and uncle, who had been working in Rippon Hospital, Shimla. The respondent No.2 after abortion joined her relatives.

4. The petitioner No. 1 and members of his family tried to contact respondent No.2, but without any response from her side. The petitioner No. 1 filed a complaint against respondent No.2 on 19.04.2011 in the Court of learned Chief Judicial Magistrate, Hamirpur. The petitioner No. 1 filed divorce petition against respondent No.2. The respondent No.2 did not appear in the case. On the contrary, respondent No.2 has filed a complaint on 19.05.2011 u/s 12 of the Protection of Women from Domestic Violence Act, 2005 (for short "the Act") in the Court of learned Chief Judicial Magistrate, Hamirpur. The respondent No.2 in order to put pressure has even filed a case for divorce.

5. The respondent No.2 has filed the complaint under the Act on total misconception and concealment of facts. The learned Judicial Magistrate has not followed proper procedure while registering the complaint. The service provider has not filed any domestic incident report nor such report has been filed by Protection Officer. The learned Magistrate has erred in summoning the petitioners vide order dated 25.05.2011. The marriage between petitioner No. 1 and respondent No.2 being a love marriage, there was no occasion for the petitioners demanding or accepting any dowry articles from the members of family of the respondent No.2, who were against the marriage. The respondent No.2 has not averred in the complaint any specific date or event so as to attract any provision of the Act. The petitioner No. 1 and members of his family are innocent, they have been falsely implicated by respondent No.2 and members of her family. The respondent No.2 till now had been sending messages to petitioner No. 1. This indicates there is no domestic violence on the part of the petitioners.

6. Heard. The learned counsel for the petitioners has submitted that complaint is vague. There is no report of the Protection Officer or service provider. In absence of such report, the learned Magistrate has erred in issuing process to the petitioners on the basis of vague complaint. The submission has been made for setting aside impugned order and quashing the complaint. The learned counsel for the petitioners has relied M. Palani Vs. Meenakshi, . The learned counsel for the respondent No.2 has supported the impugned order and submitted that no fault can be found with the impugned order.

7. The sum and substance of submissions of learned counsel for the petitioners is that without report of the Protection Officer or service provider, the learned Magistrate has no jurisdiction to take cognizance of the complaint u/s 12 of the Act. The complaint is vague which lacks material particulars for taking cognizance u/s 12 of the Act.

8. In order to appreciate the contentions of learned counsel for the petitioners, it is necessary to refer to some of the provisions of the Act. The aggrieved person has been defined in Section 2(a) means any woman who is, or has been, in domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. The domestic incident report defined in Section 2(e) means a report made in prescribed form on receipt of a complaint of domestic violence from an aggrieved person. The definition of domestic violence is provided in Section 3, economic abuse as per Section 3 (d)(iv) includes (a) deprivation of all or any economic or financial resources to which an 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, household necessities for the aggrieved person and her children, if any, "stridhan", property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance.

9. The duties and function of Protection Officer are provided in Section 9. The sub-section (1) of Section 9 provides that it shall be the duty of the Protection Officer (a) to assist the Magistrate in discharge of his functions under the Act (b) to make a domestic incident report to the Magistrate in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward the copies thereof to service provider etc.. The Section 10(2) provides that a service provider registered under subsection (1) shall have the power to (a) record the domestic incident report in prescribed form if the aggrieved person so desires and forward a copy thereof to Magistrate and Protection Officer having jurisdiction in the area where the domestic violence took place.

10. The Protection Officer on receipt of complaint of domestic violence under Rule 5 of the Protection of Women from Domestic Violence Rules, 2006 (for short "Rules") shall prepare a domestic incident report and submit the same to the Magistrate and supply copies thereof to service provider. On the request of any aggrieved person under sub-rule (2) of Rule 5 a service provider may record a domestic incident report and forward a copy thereof to Magistrate and Protection Officer having jurisdiction in the area where the domestic violence is alleged to have taken place. The application of aggrieved person u/s 12 is provided under Rule 6. The registration of service provider is provided in Rule 11.

11. The sub-section (1) of Section 12 provides that 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 the

Act. The proviso to Section 12 provides 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.

12. The sub-rule (1) of Rule 5 provides that upon receipt of a complaint of domestic violence, the Protection Officer shall prepare a domestic incident report in form-I and submit the same to the Magistrate. The sub-rule (2) of Rule 5 provides that upon a request of any aggrieved person, a service provider may record a domestic incident report and forward a copy thereof to the Magistrate and others. In other words, the domestic incident report referred to in Section 12 will originate when Protection Officer will receive a complaint under sub-rule (1) of Rule 5 or a request if made by aggrieved person to service provider under sub-rule (2) of Rule 5. The Section 12 nowhere provides that on receipt of application under sub-section (1) of Section 12, the Magistrate is under obligation to send the application to Protection Officer or service provider and ask their reports. The proviso to Section 12 of the Act operates in limited field where domestic incident report is available to the Magistrate under Rule 5 then Magistrate before passing an order shall consider such domestic incident report. The Magistrate is not debarred to take cognizance of the complaint and on the basis of material on record issue process to respondent (herein petitioners) u/s 12 in absence of domestic incident report under Rule 5. The Magistrate has jurisdiction to take cognizance of the complaint u/s 12 of the Act in absence of domestic incident report under Rule 5.

13. In *M. Palani* (supra) the contention was raised on behalf of the petitioner that Section 12 of the Act contemplates report from the Protection Officer so as to enable the learned Judge to pass an order of maintenance. In that case an application u/s 20 read with Section 26 of the Act was filed. The High Court held that a conjoint reading of both Sections 12 and 26 will make it clear that when a Magistrate passes an order, he shall receive the report from the Protection Officer whereas such a report is not contemplated when an order is passed by the Civil Court or by the Family Court. In *M. Palani* (supra) Rule 5 has not been considered. The contention of the petitioner that Section 12 contemplates report from the Protection Officer so as to enable the learned Judge to pass an order of maintenance has not been accepted.

14. Section 28 provides that save as otherwise provided in the Act, all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences u/s 31 shall be governed by Cr.P.C. The sub-section (2) of Section 28 further provides that nothing in sub-section (1) shall prevent the Court from laying down its own procedure for disposal of an application u/s 12 or under sub-section (2) of Section 23. There is nothing in the Act or the Rules to prevent the Magistrate to take cognizance of the application seeking one or more reliefs u/s 12 in absence of domestic incident report from Protection Officer or the service provider. The purpose of the Act is to give immediate relief to the aggrieved person. Thus, seen from any angle, there is no force in the contention of learned counsel for

the petitioners that Magistrate has no jurisdiction to take cognizance of the application u/s 12 of the Act before receipt of domestic incident report by Protection Officer or service provider.

15. A copy of complaint filed by respondent No.2 u/s 12 has been placed on record praying maintenance at the rate of Rs. 10,000/- per month and residential accommodation with further prayer that petitioners be restrained from maltreatment and physical torture to respondent No.2. In the complaint, it has been stated that respondent No.2 has no source of income The petitioners are having property at Delhi and are having sufficient movable and immovable property and are having means. It has been stated that respondent No.2 has been turned out from the matrimonial home after giving beatings. The learned Magistrate has only issued process to respondents on 25.05.2011. The petitioners instead of contesting the petition have rushed to this Court and filed the petition.

16. It has been stated in the complaint that after the marriage petitioner No. 1 came to Hamirpur to the parents" of respondent No.2 where they lived for sometime. The petitioner has given her address of Hamirpur in the complaint. The Section 27 provides that Magistrate of the First Class within the local limits where the person aggrieved permanently or temporarily resides, shall be the competent Court to grant a protection order and other orders under the Act. There is nothing in the petition that complainant is not residing in Hamirpur at the time of filing of the complaint. It is open to the petitioners to contest the petition and place their defence before the learned Magistrate in accordance with law. On the basis of material on record, no case has been made out for interference. There is no merit in the petition. In view of above, the petition is dismissed. The pending application, if any is also disposed of.