
(2022) 12 JH CK 0020

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1697 Of 2022

Sangeet Kumar Dubey

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 16-12-2022

Acts Referred:

Protection Of Women From Domestic Violence Act, 2005 — Section 12, 12(5), 13, 18, 19, 20, 21, 22, 23, 28, 28(2), 31

Citation : (2022) 12 JH CK 0020

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Amit Kumar Sinha, Bhola Nath Ojha, Rahul Kumar, Apoorva Singh

Final Decision : Dismissed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Amit Kumar Sinha, learned counsel for the petitioner, Mr. Bhola Nath Ojha, learned counsel for the State and Mr. Rahul Kumar, learned counsel for opposite party no.2.

2. This petition has been filed for quashing the entire criminal proceedings including the order dated 04.03.2022 by which notices have been issued to the petitioner in connection with Complaint Case No.941 of 2021, registered for the offences under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter to be referred to as 'the Act, 2005'), pending in the court of the learned Judicial Magistrate, 1st

3. The complaint case was filed by opposite party no.2 alleging therein that she was married to the petitioner on 08.03.2019 at Deoghar. After the marriage, Rs.11 Lakhs and some ornaments were handed over to the petitioner. After some time of the marriage, the in-laws started to show their displeasure with respect to the gifts brought by the opposite party no.2. The demands started into tortures and infliction of the same and some how she was beaten up. Family

counselling were conducted but the same was of no reason. The opposite party no.2 gave birth to a pre-matured child but the petitioner still did not turn up to see the child. The opposite party no.2 also mentions that the petitioner had filed a petition for divorce at the courts in Uttar Pradesh as Matrimonial Suit No.1001 of 2020. After institution of the said matrimonial suit, opposite party no.2 instituted one FIR which has been registered as Deoghar Mahila P.S. Case No.24 of 2021. Opposite party no.2 was threatened to be removed of the house. Hence, she complained about the same. The present complaint case was filed by opposite party no.2 and the same has been registered as Complaint Case No.941 of 2021 under Section 12 of the Act, 2005.

4. Mr. Amit Kumar Sinha, learned counsel for the petitioner submits that the case was posted for hearing on 21.09.2021 and Domestic Violence Report was called from the C.D.P.O., Deoghar vide order dated 01.12.2021. He further submits that once again the said Report was called vide order dated 22.01.2022, which was not received and in spite of that the learned court has directed to issue notice vide order dated 24.02.2022, which is against the mandate of law as envisaged under Sections 12 and 13 of the Act, 2005. He further elaborates his argument by way of submitting that once the learned court has called upon the report from the C.D.P.O., Deoghar, it was incumbent upon to wait for report and thereafter the notice has to be issued. He submits that this aspect of the matter has been considered by the Hon'ble Supreme Court in *Prabha Tyagi v. Kamlesh Devi*; (2022 SCC OnLine SC 607).

5. On the other hand, Mr. Rahul Kumar, learned counsel appearing for opposite party no.2 submits that it is a welfare legislation, wherein, it has been envisaged that the matter must be concluded within 60 days in view of Section 12(5) of the Act, 2005. He further submits that an application was filed directly before the learned court and it was not filed through the Protection Officer. He also submits that once the case is filed directly to the learned court, the learned court is empowered to decide the procedure and statute has also provided the same under Section 28(2) of the Act, 2005. On these grounds, he submits that there is no illegality in issuing the notice. He further submits that the petitioner can agitate all his grounds before the learned court where the matter is still pending. He placed reliance upon paragraph 65 of the judgment passed in *Prabha Tyagi* (supra).

6. Paragraph 65 of the said judgment is quoted herein below:

"65. On a conjoint reading of the aforesaid provisions, it is clear that an aggrieved person on her own or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under the DV Act but the proviso states that when a domestic incident reported is received by the Magistrate from the Protection Officer or the service provider, in such a case, the same shall be taken into consideration. Therefore, when an aggrieved person files an application by herself or with the assistance of an advocate and not with the assistance of the Protection Officer or a service

provider, in such a case, the role of the Protection Officer or a service provider is not envisaged. Obviously, there would be no domestic incident report received by a Magistrate from the Protection Officer or a service provider.”

7. Mr. Bhola Nath Ojha, learned counsel for the State submits that the learned court has decided to issue notice and there are provisions to decide that procedure under Section 28(2) of the Act, 2005. In that view of the matter, there is no illegality in issuance of notice.

8. In view of the above facts and submissions of the learned counsel for the parties, the Court has gone through the materials on the record and finds that admittedly the complaint case was filed directly before the learned Judicial Magistrate, 1st Class, Deoghar and it was not filed through Protection Officer, as per the procedure as prescribed. The learned court decided to call for the report, however the same was not received and considering the urgency in the matter, as has been envisaged under Sub-section (5) of Section 12 of the Act, 2005, the learned court has decided to issue notice. Moreover, the procedural aspect has been prescribed in the statute itself under Sub-section (2) of Section 28 of the Act. For ready reference, Section 28 of the Act, 2005 is referred herein below:

“28. Procedure-(1) Save as otherwise provided in this Act, all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under Section 12 or under sub-section (2) of Section 23.”

9. Looking into the said provision, it is crystal clear that Sub-section (2) of Section 28 envisaged that the court may lay down its own procedure for disposal of an application. Thus, it is clear that apart from waiting for the report, it is open to the learned court to follow its own procedure to dispose of the application filed under the Act. The competency to proceed further in absence of report has also been discussed by the Hon'ble Supreme Court in Prabha Tyagi (supra) in paragraph 58 of the judgment, which is quoted herein below:

“ 58.Further, the expression “family members living together as a joint family” is not relatable only to relationship through consanguinity, marriage or adoption. As observed above, the expression “joint family” does not mean a joint family as understood in Hindu law. It would mean persons living together jointly as a family. It would include not only family members living together when they are related by consanguinity, marriage or adoption but also those persons who are living together or jointly as a joint family such as foster children who live with other members who are related by consanguinity, marriage or by adoption. Therefore, when any woman is in a domestic relationship as discussed above, is subjected to any act of domestic violence and becomes an aggrieved person, she is entitled to avail the remedies under the DV Act.”

10. It is well settled that a procedural law is always in aid of justice, not in contradiction or to defeat the very object which is sought to be achieved. A reference may be made to the judgment passed by the Hon'ble Supreme Court in Saiyad Mohammad Bakar El-Edroos (dead) by LRS v. Abdulhabib Hasan Arab and others; [(1998) 4 SCC 343]. Paragraph 8 of the said judgment is quoted herein below:

"8. A procedural law is always in aid of justice, not in contradiction or to defeat the very object which is sought to be achieved. A procedural law is always subservient to the substantive law. Nothing can be given by a procedural law what is not sought to be given by a substantive law and nothing can be taken away by the procedural law what is given by the substantive law."

11. In view of the above facts, reasons and analysis, there is no illegality in issuing the notice by the learned court.

12. Accordingly, this petition stands dismissed.

13. However, the petitioner is at liberty to take all the grounds before the learned court, which will be decided by the learned court in accordance with law, without prejudiced to this order.

14. Consequently, I.A. No.8709 of 2022 also stands dismissed.

15. Interim order dated 27.06.2022 stands vacated.