

**HIGH COURT OF JAMMU, KASHMIR AND LADAKH
AT JAMMU**

Reserved on : 26.04.2023
Pronounced on: 21.07.2023

CRM(M) No. 317/2020(O&M)

Khalid Amin Kohli

.....Appellant(s)/Petitioner(s)

Through: Mr. M. I. Sher Khan, Adv.

Vs

Union Territory of J&K and others

..... Respondent(s)

Through: Mr. Aftab Malik, Adv. for No. 3

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGEMENT

1. This is a petition filed under section 482 of Code of Criminal Procedure (for short 'the Code') for quashing the order/judgment dated 27.08.2020 passed by the learned Principal Sessions Judge, Poonch (hereinafter to be referred as 'the appellate court') in appeal, titled, "Khalid Amin Kohli vs Anjum Kasana" and also the order dated 31.12.2019 passed by the learned Chief Judicial Magistrate, Poonch (hereinafter to be referred as 'the trial court'), whereby the petitioner has been directed to pay sum of Rs. 8000/- each to all the four children from the date of filing of the application under section 23 of The Jammu and Kashmir Protection of Women From Domestic Violence Act, 2010 (for short 'the Act of 2010').
2. The respondent No.3 filed an application under section 12 of the Act of 2010 and along with the petition, she also filed an application for grant of interim relief. The learned trial court vide its order dated 31.12.2019 directed the

petitioner to pay sum of Rs. 8000/- each to all the four children from the date of filing of the application under section 23 of the Act of 2010. The petitioner assailed the order passed by the learned trial court through the medium of the appeal under section 29 of the Act of 2010 but the same was dismissed by the learned Appellate Court vide order dated 27.08.2020.

3. The present petition has been filed by the petitioner for quashing both the orders i.e. the orders of appellate court as well as the trial court, on the ground that two daughters of the petitioner as well as respondent No. 3 are major and third daughter of the petitioner has also attained majority during the pendency of the proceedings under the Act of 2010 pending before the learned trial court. It is also stated that the respondent No. 3 (mother) cannot maintain the petition on behalf of the major daughters.
4. Objections have been filed by respondent No. 3 wherein preliminary objection in respect of maintainability of the present petition under section 482 Cr.P.C. has been raised. The factual aspects of the case have also been narrated and it is admitted that the three daughters of the contesting parties are major.
5. Heard and perused the record.
6. Since the preliminary objection, with regard to the maintainability of the petition filed under section 482 of the Code in respect of the orders impugned, has been raised, this Court first of all shall consider and decide the preliminary objection raised by the respondent No. 3.
7. The Act of 2010 was meant to provide for effective protection of the rights of the women and to prevent them from being the victim of the violence of any act

occurring within the family. Section 12 of the Act of 2010 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 this Act. The Act provides for grant of various reliefs to the aggrieved person in the form of protection orders, residence orders, monetary reliefs, custody orders and compensation orders. The Magistrate has also been vested with powers to grant interim and *ex parte* orders in terms of section 23 of the Act of 2010. So far as procedure that is applicable to the proceedings under the Act of 2010 is concerned, section 28 of the Act of 2010 is relevant and the same is reproduced as under:

“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, Samvat 1989. (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.”

8. A perusal of section 28 reveals that except as otherwise provided under the Act of 2010, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 are governed by the provisions of the Code. Simultaneously, the Magistrate has been left free to lay down its own procedure for disposal of an application under section 12 or under sub section (2) of section 23.
9. Rule 6 of the Protection of Women from Domestic Violence Rules, 2011(for short ‘the Rules’) provides that application under section 12 shall be dealt

with and the orders enforced in the same manner laid down under section 488 of the Code, 1989. Section 28 of the Act of 2011 provides that all the 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 whereas Rule 6 of the Rules provides that the procedure as laid down under section 488 of the Code has been made applicable to the application under section 12 of the Act of 2010.

10. The reliefs provided in terms of sections 12, 18, 19, 20, 21 and 22 of the Act of 2010 are primarily civil in nature and it is only when the protection order or an interim protection order has been breached by the respondent, he has been rendered liable for punishment with an imprisonment for a term which may extend to one year or with fine which may extend to Rs. 20,000/- or with both.
11. Section 29 of the Act of 2010 provides for an appeal to the court of Sessions within thirty days from the date on which the order made by the Magistrate is served upon the aggrieved person or the respondent, as the case may be.
12. Section 26 of the Act of 2010 is very relevant so as to find out as to whether the Magistrate while proceeding under the Act of 2010 acts as a criminal court or not. Section 26 of the Act of 2010 is reproduced as under:

“26. Relief in other suits and legal proceedings (1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceedings, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act. (2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before civil or criminal court. (3) In case any relief has been obtained by the aggrieved person in any proceedings other than a

proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.”

13. A perusal of section 26 would reveal that any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceedings before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.
14. Section 2(i) of the Act of 2010 defines ‘Magistrate’ as the Judicial Magistrate of the First Class exercising jurisdiction under the Code of Criminal Procedure, Samvat 1989, in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place.
15. Thus, it is evident that the Magistrate under the Act means Judicial Magistrate 1st Class exercising the jurisdiction under the Code. For a Magistrate to exercise any jurisdiction under the Act has to be a Judicial Magistrate 1st Class. The Judicial Magistrate 1st Class under the Code is a criminal court while exercising any power under the Code.
16. If the intention of the legislature had been to confer power on the Magistrate as the criminal court, then the separate reference to a criminal court under section 28 of the Act was not required at all. Merely because of the procedure as provided under the Code has been made applicable to all the proceedings under sections 18, 19, 20, 21 and 22 of the Act of 2010 would not clothe the Magistrate while exercising the jurisdiction under the Act of 2010 as a

criminal court. The Act of 2010 is in fact the complete Code in itself that not only provides for grant of various reliefs by the Magistrate while exercising jurisdiction under the Act but also vests the powers upon the Civil, Criminal and Family court to grant the reliefs under the Act.

17. It needs to be noted that section 19(3) of the Act of 2010 empowers the Magistrate to direct the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence. In terms of sub-section (4) of section 19, order has been deemed to be an order under Chapter VII of the Code and is required to be dealt with accordingly. It further depicts that the Magistrate exercising jurisdiction under the Act is not exercising the jurisdiction as a criminal court under the Code.
18. The Full Bench of Madras High Court in '**Arul Daniel and others vs Suganya**', **2022 SCC Online Mad 5435** has held that a petition under section 482 CrPC challenging the proceedings initiated under section 12 of the Protection of Women from Domestic Violence Act is not maintainable. However, a petition under section 227 of the Constitution of India is maintainable if the proceedings before the Magistrate suffered from a patent lack of jurisdiction.
19. In view of the above, this Court is of the considered view that a petition under section 482 Cr.P.C. cannot be filed for the purpose of challenging the proceedings initiated under section 12 of the Act of 2010 or the orders passed thereunder. If the respondent or the aggrieved person is aggrieved of any order passed by the appellate court in terms of section 29 of the Act of 2010, the

respondent or aggrieved person can approach the High Court under Article 227 of the Constitution of India. This court is of the considered view that the present petition under section 482 Cr.P.C is not maintainable.

20. As this Court has held that petition under section 482 of the Code for quashing the proceedings in terms of the Act of 2010 is not maintainable in respect of the proceedings arising out of Domestic Violence Act or the orders passed thereunder, now this court would examine whether the interference of this Court is warranted in the present case under article 227 of the Constitution of India.
21. The order under section 23 of the Act of 2010 directing the petitioner to pay Rs. 8000/- each per month to all the children was passed by the learned trial court vide order dated 31.12.2019. The said order was upheld by the appellate court vide order dated 27.08.2020. Both these orders arise out of the application filed by the respondent No. 3 under section 23 of the Act of 2010 and the main proceedings are still pending before the learned trial court. The petitioner has raised the plea that major daughters are not entitled to maintenance under the Act of 2010 and the mother cannot maintain the petition on behalf of the major children before the trial court. These issues can be raised by the petitioner only before the Magistrate and not in a petition under Article 227 of the Constitution of India, whereby the interim order passed by the learned trial court and upheld by the appellate court has been impugned. More so, third daughter of the petitioner and respondent No. 3 attained majority during the pendency of the proceedings. This Court would

not like to determine the merits of the claims of the contesting parties and leave them free to agitate the same before the learned trial court, where the main petition under section 12 of the Act of 2010, is still pending.

22. Accordingly, this petition is disposed of with a liberty to the petitioner to raise all these pleas before the learned trial court and in the event such pleas are raised, the learned trial court shall proceed in accordance with law.

(RAJNESH OSWAL)
JUDGE

Jammu
21.07.2023
Rakesh

