Neutral Citation No. - 2024:AHC-LKO:52294

A.F.R.

Court No. - 30
Case :- APPLICATION U/S 482 No. - 6975 of 2013
Applicant :- Smt. Suman Mishra
Opposite Party :- The State Of U.P And Ors.
Counsel for Applicant :- Shishir Pradhan
Counsel for Opposite Party :- Govt. Advocate, Ashok Kr. Verma

Hon'ble Om Prakash Shukla,J.

A. Prelude

(1) Applicant, **Smt. Suman Mishra**, who is the sister-in-law of opposite party no.2-Smt. Parul Mishra, has filed the instant application under Section 482 of the Code of Criminal Procedure, 1973, assailing the order dated 13.04.2012 passed by the Chief Judicial Magistrate, Barabanki in Complaint Case No. 744 of 2012 : *Smt. Parul Mishra and another Vs. Nishant Mishra and others,* as well as the order dated 21.09.2013 passed by the learned Additional Sessions Judge/Special Judge (E.C. Act), Barabanki in Criminal Revision No. 112 of 2012 : *Smt. Suman Mishra Vs. Smt. Parul Mishra and others.*

(2) Apparently, by the impugned order dated 13.04.2012, application filed by the applicant dated 09.08.2011 seeking to quash the proceeding instituted against her by Smt. Parul Mishra (opposite party no.2 herein) in Complaint Case No. 744 of 2012 and a prayer to delete her name arrayed as opposite party No.7 in Complaint Case No. 744 of 2012, was rejected,

which came to be affirmed by the learned Additional Sessions Judge/Special Judge (E.C. Act), Barabanki in Criminal Revision No. 112 of 2012 while rejecting the revision, by the impugned order dated 21.09.2013.

B. <u>Factual background</u>

(3) Shorn of unnecessary details, facts in brief, as borne out from the pleadings, are that opposite party no.2-Smt. Parul Mishra had approached the Court of Chief Judicial Magistrate, Lucknow by filing application/complaint under Section 12 of the Protection of Woman from Domestic Violence Act, 2005 (hereinafter referred to as **'DV Act, 2005'**) against nine persons including the applicant, thereby seeking protection orders, residence orders and compensation orders to be passed under various provisions of DV Act, 2005 and also seeking for monetary reliefs under Section 22 of the DV Act, 2005.

(4) It was stated in the aforesaid application/complaint case by the opposite party no.2-Smt. Parul Mishra that her marriage was solemnized with Nishant Mishra in accordance with Hindu rites, rituals and customs on 20.02.2007. At the time of marriage, her parents and relatives gave sufficient dowry and *Stridhan,* including one Maruti WagonR Car, cash, Jewellery, furniture and household items, value of which would be Rs.20,00,000/-. Out of the said wedlock, one daughter, namely,

Km. Garvita alias Vibhu was born. Her husband Nishant Mishra is working as Assistant Engineer (Mechanical Boiler Maintenance Care)/Chief General Manager, Parichha Thermal Power Station, Jhansi and his monthly salary from all sources was Rs.50,000/-. After marriage, opposite party no.2 was living her marital life in a joint family, but her husband, father-in-law, mother-in-law, brother-in-law, sister-in-law (applicant herein) and other opposite parties in the aforesaid complaint case used to torture her by insulting and harassing her in various ways and they also used to assault and abuse her from time to time and they even were planning to kill her by giving slipping pill.

(5) Apparently, vide order dated 15.04.2011, the Chief Judicial Magistrate, in view of the aforesaid complaint of the opposite party No.2, directed to register the aforesaid complaint/ application as miscellaneous case and also directed the Protection Officer to submit a domestic incident report. In compliance thereof, the complaint/ application of the opposite party no.2-Smt. Parul Mishra and Kumari Garvita alias Vibhu was registered as Complaint Case No. 774 of 2012.

(6) On perusal of Annexure No.2, which is an application filed by the applicant before the Chief Judicial Magistrate, Barabanki, it seems that a preliminary inquiry was conducted by the Protection Officer for compliance of the aforesaid order of the

Chief Judicial Magistrate dated 15.04.2011 and for this purpose, the Protection Officer had issued notice to the applicant requiring to submit her reply, however, it appears that instead of participating in the preliminary inquiry before the Protection Officer, the applicant had filed an application before the Chief Judicial Magistrate, Barabanki, seeking to quash the proceedings instituted against her and also praying to delete her name as opposite party No.7 from the array of the parties in Complaint Case No. 774 of 2012. The learned Chief Judicial Magistrate, after going through the averments made in the complaint, opined that complainants/opposite parties no.2 and 3 herein had sought relief in para No.26 of the Complaint Case No. 774 of 2012 against all the opposite parties including the applicant, therefore, , application filed by the applicant was not acceptable and accordingly, vide order dated 13.04.2012, application of the applicant was rejected by the Chief Judicial Magistrate, Barabanki.

(7) The applicant being aggrieved had filed Criminal Revision No. 112 of 2012 before the Additional Sessions Judge/Special Judge (E.C. Act), Barabanki, challenging the aforesaid order dated 13.04.2012 passed by the Chief Judicial Magistrate, Barabanki, which was rejected while affirming the order dated 13.04.2012 by the Additional Sessions Judge/Special Judge (E.C. Act), Barabanki vide order dated 21.09.2013.

(8) In the aforesaid backdrops, the applicant has approached this Court under Section 482 Cr.P.C., challenging the aforesaid two orders i.e. dated 13.04.2012 passed by the Chief Judicial Magistrate, Barabanki and the order dated 21.09.2013 passed by the Additional Sessions Judge/Special Judge (E.C. Act), Barabanki.

(9) Heard Shri Shishir Pradhan, learned Counsel for the applicant, Shri Mayank Singh, learned Additional Government Advocate for the State and Shri Ashok Kumar Verma, learned Counsel for the opposite parties no. 2 and 3/complainant.

C. <u>Preliminary Objection</u>

(10) At the outset, Shri Ashok Kumar Verma, learned Counsel representing the complainants/opposite parties no. 2 and 3 have questioned the maintainability of the present application filed under Section 482 of the Cr.P.C.

(11) In order to canvas the issue of maintainability of the application under Section 482 of Cr.P.C., learned Counsel placing reliance on the decision of the Hon'ble Supreme Court in the case of **Sou. Sandhya Manoj Wankhade Vs. Manoj Bhimrao Wankhade and others** : 2011 (3) SCC 650, **Prabha Tyagi Vs. Kamlesh Devi** : (2022) 8 SCC 90, **Kamatchi Vs. Laxmi Narayanan** : (2022) 15 SCC 50. The learned counsel has stated

that in *Kamatchi vs. Laxmi Narayanan's case* (supra), the Apex Court has considered the decision of learned Single Judge of Madras High Court rendered in the case of **Dr. P. Pathamanathan and others vs. Tmt. V. Monika and others** : 2021 SCC Online (Madras) 8731 and has approved the said decision. According to the learned Counsel, Hon'ble Supreme Court in Kamatchi's case (supra), while dealing with the arguments advanced by the Counsel for the respondents in that case, relied on the judgment of **Adalat Prasad vs. Ruplal Jindal**, reported in (2004) 7 SCC 338 and held that the matter where the order of issuance of process is issued in a complaint on taking cognizance, stands on a different footing and cannot be compared with the proceeding under Section 12 of the D.V. Act because the scope of notice under Section 12 of the D.V. Act is to call for a response from the respondent in terms of the Statute so that after considering rival submissions, appropriate order can be issued. Hon'ble Apex Court, by relying upon the decision in the case of Adalat Prasad's case (supra), has held that considering the nature of the proceedings under the D.V. Act, the same cannot be challenged under Section 482 of the Cr.P.C. Thus, his submission is that a Magistrate exercising jurisdiction under the D.V. Act is not a Criminal Court within the meaning of Section 6 of the Cr.P.C. Moreso, in the instant case, the Chief Judicial Magistrate, while exercising under

Section 12 of the D.V. Act, only directed the Protection Officer to inquire into the matter and submit its report and in response thereof, the Protection Officer had issued notice to the opposite parties arrayed in the complaint including the applicant herein, but instead of giving reply to the notice of the Protection Officer, the applicant had filed application seeking to delete her name from the array of the opposite parties in the complaint. According to the learned Counsel, as the Chief Judicial Magistrate under the D.V. Act was not a Criminal Court and the Chief Judicial Magistrate had not issued any notice or summon the opposite parties of the complaint and the applicant is only aggrieved by the notice issued to her by the Protection Officer, the instant petition/application filed under Section 482 Cr.P.C. is not maintainable to quash the proceedings of the complaint/ application filed under Section 12 of the D.V. Act.

(12) *Per contra*, Shri Shishir Pradhan, learned Counsel representing the applicant has submitted that in Kamatchi's case, the issue involved was with regard to the limitation for filing the proceeding under Section 12 of the D.V. Act in view of section 468 of the Code of Criminal Procedure, 1973. According to learned Counsel, Kamatchi's case (supra), does not deal with the issue of maintainability of the application under Section 482 of Cr.P.C. for quashing the proceeding filed under Section 12 of the D.V. Act,. The observations made by the Hon'ble Supreme

Court in paragraph 30 of the decision in Kamatchi's case cannot be relied upon to substantiate the argument that Hon'ble Supreme Court has held that the proceeding under Section 482 of the Cr.P.C., seeking relief of quashing of the D.V. Act proceeding, is not maintainable. Thus, it has been submitted that the argument advanced on behalf of complainants/ opposite parties No. 2 and 3 on the point of maintainability of the present petition should not be entertained.

(13) Drawing attention of this Court to Section 28 of the D.V. Act, learned Counsel has submitted that the provisions of Code of Criminal Procedure, 1973 are made applicable to the proceedings under the D.V. Act and, therefore, application under Section 482 of Cr.P.C. cannot be excluded. According to the learned Counsel, main relief claimed by the complainant in the application filed under Section 12 of the D.V. Act was against her husband, who is opposite party no.1 in the complaint and the applicant being the sister-in-law of the complainant has no concern with the relief as claimed in the complaint and as such, the name of the applicant ought to be deleted from the array of the parties in the complaint filed by the complainant under Section 12 of the D.V. Act, however, the learned trial Court has erroneously rejected the application of the applicant in this regard by means of the impugned order.

(14) To strengthen his submission, learned Counsel for the applicant has placed reliance upon the judgment of the Hon'ble Supreme Court in **Preeti Gupta and another Vs. State of Jharkhand and another** (Criminal Appeal No. 1512 of 2010, decided on 13.08.2010), **State of Haryana and Bhajan Lal and others** : 1992 Supp. (1) SCC 335 and the judgment of the Hon'ble Andhra Pradesh High Court rendered in the case of **Mohammad Maqeenuddin Ahmed Vs. State of Andhra Pradesh and another** : 2007CriLJ 3361.

D. **Analysis of the aforesaid Preliminary Objection**

(15) In view of the rival submissions on the point of maintainability of the present proceedings under Section 482 Cr.P.C., this Court has gone through the record and proceedings and more particularly the judgments relied upon by the learned Counsel for the parties.

(16) Much emphasis has been laid by the learned Counsel for the opposite parties no. 2 and 3 on the decision of Hon'ble Supreme Court in Kamatchi's case (supra) in support of the contention that application under Section 482 of Cr.P.C. is not maintainable for quashing the proceeding filed under Section 12 of the D.V. Act. On the other hand, learned Counsel for the applicant submits that the said decision of Hon'ble Supreme

Court was mainly concerned with the point of limitation for the purpose of filing application and not on the point of maintainability of the proceedings under Section 482 of Cr.P.C.

(17) Before considering the Judgment of the Hon'ble Supreme Court in Kamatchi's case, it would be profitable to note that a Full Bench of Madras High Court in **Arul Daniel v. Suganya** : 2022 SCC OnLine Mad 5435 has relying on the decision of Hon'ble Supreme Court in Kamatchi's case (supra) has observed that the proceeding under Section 482 of the Cr.P.C. for quashing the proceeding under Section 12 of the D.V. Act is not maintainable and the remedy available to such a party would be a statutory appeal before the Sessions Court under Section 29 of the D.V. Act. Pertinently, the Hon'ble Supreme Court in Kamatchi's case has considered and approved the decision of a learned Single Judge of Madras High Court in **Dr. P. Pathmanathan Vs. V. Monica** : 2021 SCC OnLine Mad 8731. Therefore, this Court deems it apt that before proceeding to appreciate the submissions made by the parties, it would be appropriate to consider the decision of learned Single Bench of Madras High Court in Dr. P. Pathmanathan's case (supra).

(18) In Dr. P. Pathmanathan's case (supra), a batch of cases related to the jurisdiction of the High Court to quash a complaint under Section 12 of the D.V. Act in exercise of its inherent power

under Section 482 of the Code of Criminal Procedure Code, 1973 was engaging the attention of the learned Single Judge of the Madras High Court, wherein the scheme of the provisions of the D.V. Act was considered. The learned Single Judge relying on various precedents of the Hon'ble Supreme Court as well as the High Court, gave a slew of observation and directions in that batch of cases, which makes for an interesting enumeration, as herein below :-

> *" The following directions are, therefore, issued:*
>
> (i) *An application under* Section 12 *of the D.V. Act, is not a complaint under* Section 2(d) *of the Cr.P.C. Consequently, the procedure set out in* Section 190(1)(a) *&* 200 *to* 204*, Cr.P.C as regards cases instituted on a complaint has no application to a proceeding under the* D.V Act*. The Magistrate cannot, therefore, treat an application under the D.V Act as though it is a complaint case under the Cr.P.C.*
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> (ii) *An application under* Section 12 *of the Act shall be as set out in Form II of the D.V Rules, 2006, or as nearly as possible thereto. In case interim ex-parte orders are sought for by the aggrieved person under Section 23(2) of the Act, an affidavit, as contemplated under Form III, shall be sworn to.*
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> (iii) *The Magistrate shall not issue a summon under* Section 61*, Cr.P.C to a respondent(s) in a proceeding under* Chapter IV of the D.V Act*. Instead, the Magistrate shall issue a notice for appearance which shall be as set out in Form VII appended to the D.V Rules, 2006. Service of such notice shall be in the manner prescribed under* Section 13 *of the Act and Rule 12 (2) of the D.V Rules, and*

shall be accompanied by a copy of the petition and affidavit, if any.

(iv) *Personal appearance of the respondent(s) shall not be ordinarily insisted upon, if the parties are effectively represented through a counsel. Form VII of the D.V Rules, 2006, makes it clear that the parties can appear before the Magistrate either in person or through a duly authorized counsel. In all cases, the personal appearance of relatives and other third parties to the domestic relationship shall be insisted only upon compelling reasons being shown. (See* Siladitya Basak v State of West Bengal *(2009 SCC Online Cal 1903)*

(v) If the respondent(s) does not appear either in person or through a counsel in answer to a notice under Section 13, the Magistrate may proceed to determine the application ex-parte.

(vi) *It is not mandatory for the Magistrate to issue notices to all parties arrayed as respondents in an application under* Section 12 *of the Act. As pointed out by this Court in Vijaya Baskar (cited supra), there should be some application of mind on the part of the Magistrate in deciding the respondents upon whom notices should be issued. In all cases involving relatives and other third parties to the matrimonial relationship, the Magistrate must set out reasons that have impelled them to issue notice to such parties. To a large extent, this would curtail the pernicious practice of roping in all and sundry into the proceedings before the Magistrate.*

(vii) *As there is no issuance of process as contemplated under* Section 204*, Cr.P.C in a proceeding under the* D.V Act*, the principle* laid down in Adalat Prasad v Rooplal Jindal *(2004 7 SCC 338) that a process, under* Section 204*, Cr.P.C, once issued cannot be reviewed or recalled, will not apply to a proceeding under the* D.V Act*. Consequently, it would be open to an aggrieved respondent(s) to approach the Magistrate and raise the issue of*

maintainability and other preliminary issues. Issues like the existence of a shared household/domestic relationship etc., which form the jurisdictional basis for entertaining an application under Section 12*, can be determined as a preliminary issue, in appropriate cases. Any person aggrieved by such an order may also take recourse to an appeal under* Section 29 *of the D.V Act for effective redress (See* V.K Vijayalekshmi Amma v Bindu*. V, (2010) 87 AIC 367). This would stem the deluge of petitions challenging the maintainability of an application under* Section 12 *of the D.V Act, at the threshold before this Court under* Article 227 *of the Constitution.*

(viii) *Similarly, any party aggrieved may also take recourse to* Section 25 *which expressly authorises the Magistrate to alter, modify or revoke any order under the Act upon showing change of circumstances.*

(ix) *In Kunapareddy (cited supra), the Hon'ble Supreme Court upheld the order of a Magistrate purportedly exercising powers under Order VI, Rule 17 of The* Code of Civil Procedure*, 1908 (hereinafter referred to as "*C.P.C.*"), to permit the amendment of an application under* Section 12 *of the D.V Act. Taking a cue therefrom, it would be open to any of the respondent(s), at any stage of the proceeding, to apply to the Magistrate to have their names deleted from the array of respondents if they have been improperly joined as parties. For this purpose, the Magistrate can draw sustenance from the power under Order I Rule 10(2)* of the C.P.C*. A judicious use of this power would ensure that the proceedings under the* D.V Act *do not generate into a weapon of harassment and would prevent the process of Court from being abused by joining all and sundry as parties to the lis.*

(x) *The Magistrates must take note that the practice of mechanically issuing notices to the respondents named in the application has been deprecated by this Court nearly a*

decade ago in Vijaya Baskar (cited supra). Precedents are meant to be followed and not forgotten, and the Magistrates would, therefore, do well to examine the applications at the threshold and confine the inquiry only to those persons whose presence before it is proper and necessary for the grant of reliefs under Chapter IV of the D.V Act.

(xi) *In Satish Chandra Ahuja (cited supra), the Hon'ble Supreme Court has pointed out the importance of the enabling provisions under* Section 26 *of the D.V Act to avoid multiplicity of proceedings. Hence, the reliefs under Chapter IV of the D.V can also be claimed in a pending proceeding before a civil, criminal or family court as a counter claim.*

(xii) *While recording evidence, the Magistrate may resort to chief examination of the witnesses to be furnished by affidavit (See Lakshman v Sangeetha, 2009 3 MWN (Cri) 257. The Magistrate shall generally follow the procedure set out in* Section 254*, Cr.P.C while recording evidence.*

(xiii) Section 28(2) *of the Act is an enabling provision permitting the Magistrate to deviate from the procedure prescribed under* Section 28(1)*, if the facts and circumstances of the case warrants such a course, keeping in mind that in the realm of procedure, everything is taken to be permitted unless prohibited (See* Muhammad Sulaiman Khan v Muhammad Yar Khan*, 1888 11 ILR All 267).*

(xiv) *A petition under* Article 227 *of the Constitution may still be maintainable if it is shown that the proceedings before the Magistrate suffer from a patent lack of jurisdiction. The jurisdiction under* Article 227 *is one of superintendence and is visitorial in nature and will not be exercised unless there exists a clear jurisdictional error and that manifest or substantial injustice would be caused if the power is not exercised in favour of the petitioner. (See* Abdul Razak v. Mangesh Rajaram

> Wagle *(2010) 2 SCC 432, Virudhunagar* Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society*, (2019) 9 SCC 538.) In normal circumstances, the power under* Article 227 *will not be exercised, as a measure of self-imposed restriction, in view of the corrective mechanism available to the aggrieved parties before the Magistrate, and then by way of an appeal under* Section 29 *of the Act."*

(19) Having noted the judgment passed by the Hon'ble Madras High Court in Dr. P. Pathmanathan's case (supra), it would be necessary to consider the main question involved before Hon'ble Supreme Court in Kamatchi's case (supra). In Kamatchi's case (supra), the respondents/(husband and in-laws) had challenged the proceeding initiated by the appellant/wife under Section 12 of the D.V. Act by filing an application under Section 482 of the Cr.P.C. The application of the father-in-law and sister-in-law under Section 482 of Cr.P.C. was allowed. However, with regard to the application filed by the husband, although the Hon'ble Madras High Court had rejected the contention of the respondent/husband on merits, however, on the point of limitation, the application under Section 12 of the D.V. Act was dismissed by the High Court as the same was filed after one year by the appellant/wife. The said order was challenged by the wife by filing an appeal before the Hon'ble Supreme Court. Before the Hon'ble Supreme Court, on behalf of the wife, two submissions were advanced; firstly that the

limitation is not provided for filing application under Section 12 of the D.V. Act and the limitation provided under Section 468 of the Cr.P.C. would be applicable only for initiation of criminal prosecution under Sections 31 and 33 of the D.V. Act; and secondly that the judgments relied upon by the High Court were distinguishable and for that purpose reliance was placed on the decision of learned Single Judge of Madras High Court in Dr. P. Pathmanathan's case (supra). Learned Counsel representing the respondent/husband relied upon the decision in the case of **Sarah Mathew vs. Institute of Cardio Vascular Diseases** : (2014) 2 SCC 62 to substantiate his submission that period of limitation would be one year and the same has to be reckoned from the date of the application. The second submission was made by relying upon the decision in Adalat Prasad's case (supra). Hon'ble Supreme Court in Kamatchi's case has reproduced the said written submission in paragraph 10. Said paragraph 10 of the judgment in Kamatchi's case needs to be extracted, which reads as under :-

> *"11. In the written submissions, it is also submitted that: -*
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> *"This Hon'ble Court in Adalat Prasad v. Rooplal Jindal held that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused, or any material implicating the accused, or in contravention of provisions of Sections 200 and 202, the order of the Magistrate may be vitiated. However, the relief an aggrieved accused can*

> *obtain at that stage is not by invoking Section 203 of the Code, because the Code does not contemplate a review of an order. Hence in the absence of any review power, or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code."*

(20) It is to be noted that in Dr. P. Pathamanathan's case, the issue of limitation was not raised nor the same was dealt with. The issue involved in the said case was with regard to maintainability of proceedings under Section 482 of Cr.P.C for quashing the proceedings filed under Section 12 of the D.V. Act. In order to meet this argument advanced on behalf of the appellant/wife relying upon the decision in Dr. P. Pathmanathan's case, learned Counsel for the respondent/ husband before Hon'ble Supreme Court relied upon the decision in Adalat Prasad's case and submitted that in absence of review power or inherent power with the subordinate criminal courts, the remedy lies only by invoking Section 482 of the Cr.P.C. Negating the argument of the husband, the Hon'ble Supreme Court made the relevant observations in paragraphs 27 to 30, which are being extracted as herein below:

> *"28. The special features with regard to an application under Section 12 of the Act were noticed by a Single Judge of the High Court in **Dr. P.Padmanathan & Ors.** as under:*
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> > *"19. In the first instance, it is, therefore, necessary to examine the areas where the D.V. Act or the D.V. Rules have specifically set out the procedure thereby excluding the operation of Cr.P.C. as contemplated under Section 28(1) of the Act. This takes us to the*

D.V. Rules. At the outset, it may be noticed that a "complaint" as contemplated under the D.V. Act and the D.V. Rules is not the same as a "complaint" under Cr.P.C. A complaint under Rule 2(b) of the D.V. Rules is defined as an allegation made orally or in writing by any person to a Protection Officer. On the other hand, a complaint, under Section 2(d) of the Cr.P.C. is any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown has committed an offence. However, the Magistrate dealing with an application under Section 12 of the Act is not called upon to take action for the commission of an offence. Hence, what is contemplated is not a complaint but an application to a Magistrate as set out in Rule 6 (1) of the D.V. Rules. A complaint under the D.V. Rules is made only to a Protection Officer as contemplated under Rule 4(1) of the D.V. Rules.

20. Rule 6 (1) sets out that an application under Section 12 of the Act shall be as per Form II appended to the Act. Thus, an application under Section 12 not being a complaint as defined under Section 2(d) of the Cr.P.C, the procedure for cognizance set out under Section 190(1)(a) of the Code followed by the procedure set out in Chapter XV of the Code for taking cognizance will have no application to a proceeding under the D.V. Act. To reiterate, Section 190(1)(a) of the Code and the procedure set out in the subsequent Chapter XV of the Code will apply only in cases of complaints, under Section 2(d) of Cr.P.C, given to a Magistrate and not to an application under Section 12 of the Act."

28. It is thus clear that the High Court wrongly equated filing of an application under Section 12 of the Act to lodging of a complaint or initiation of prosecution. In our considered view, the High Court was in error in observing that the application under Section 12 of the Act ought to

> *have been filed within a period of one year of the alleged acts of domestic violence.*
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> *29. It is, however, true that as noted by the Protection Officer in his Domestic Inspection Report dated 2.08.2018, there appears to be a period of almost 10 years after 16.09.2008, when nothing was alleged by the appellant against the husband. But that is a matter which will certainly be considered by the Magistrate after response is received from the husband and the rival contentions are considered. That is an exercise which has to be undertaken by the Magistrate after considering all the factual aspects presented before him, including whether the allegations constitute a continuing wrong.*
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> *30. Lastly, we deal with the submission based on the decision in Adalat Prasad.* ***The ratio in that case applies when a Magistrate takes cognizance of an offence and issues process, in which event instead of going back to the Magistrate, the remedy lies in filing petition under Section 482 of the Code. The scope of notice under Section 12 of the Act is to call for a response from the respondent in terms of the Statute so that after considering rival submissions, appropriate order can be issued. Thus, the matter stands on a different footing and the dictum in Adalat Prasad would not get attracted at a stage when a notice is issued under Section 12 of the Act.****"*

(21) It is to be noted that paragraph 19 of Dr. P. Pathmanathan's case has been considered by the Hon'ble Supreme Court in Kamatchi's case and after considering the same, it was held by the Hon'ble Supreme Court that an application under Section 12 of the D.V. Act cannot be equated with the lodging of complaint or initiation of the prosecution under the Code of Criminal Procedure, 1973. It was also held by the Hon'ble Supreme Court that the decision in the case of Adalat Prasad (supra) would not

come to any rescue, so as to justify the argument to invoke Section 482 Cr.P.C. in DV Act proceeding when a notice is issued under Section 12 of the DV Act. It was also specifically held that Adalat Prasad's case would be applicable when a Magistrate takes cognizance of the offense in terms of Section 190 (1) (a) of the Code of Criminal Procedure, 1973 and issue process and not in the matter of issuance of notice under Section 12 of the DV Act. Thus, it was concluded by the Hon'ble Supreme Court that the matter of taking cognizance for issuance of process and matter under Section 12 of the D.V. Act stands on different footing and therefore, the decision in Adalat Prasad's case would not get attracted at the stage when notice is issued under Section 12 of the Act by the concerned Magistrate.

(22) This Court is also in humble agreement with the said analogy drawn by the Hon'ble Supreme Court, more so, Sections 28 and 29 of the DV Act provides 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, 1973 (2 of 1974)...*
>
> ***29. Appeal**.—There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later."*

(23) In terms of Section 28 of the DV Act, proceedings under Sections 12 to 23 of the DV Act would be governed by provisions of the Cr.P.C. Further, as per Section 29 of the DV Act, an appeal against the order of the Magistrate shall lie to the Sessions Court. The DV Act does not provide for any further appeal against the order passed by the Sessions Court. This Court in **Dinesh Kumar Yadav v. State of U.P. :** 2016 SCC OnLine All 3848, has held that a revision to the High Court is maintainable against an order passed by the Sessions Court under Section 29 of the DV Act. Relevant observations of the said judgment are set out below:

> "*35. Under section 397 of Cr. P.C. "the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court…". That the Court of Sessions is as an inferior Court to the High Court, cannot be disputed. Thus, the Court of Sessions before which an appeal has been prescribed under section 29 of the Act, 2005 is a Criminal Court inferior to the High Court and, therefore, a revision against its order passed under section 29 will lie to the High Court under section 397 Cr.P.C. section 401 Cr. P.C. is supplementary to section 397 Cr.P.C.*
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> *xxxx xxxx xxxx xxxx*
>
> *37. In view of the above, as the remedy of an appeal had been provided under section 29 of the Act, 2005 before a Court of Sessions, which means a Court of Sessions referred under section 6 read with sections 7 and 9 of the Cr.P.C., without saying anything more as regards the procedure to be followed in such appeal, and there being nothing to the*

> *contrary in the Act of 2005 which may be indicative of exclusion of the application of the provisions of Cr. P.C. to such an appeal, the normal remedies available against a judgment and order passed by a Court of Sessions by way of appeals and revisions prescribed under the Cr. P.C. before the High Court, are available against an order passed in appeal under section 29 of the Act, 2005."*

(24) In the instant application, there is no dispute to the fact that the opposite parties no. 2 and 3 had filed an application under Section 12 of the D.V. Act against the applicant and other persons. The Chief Judicial Magistrate, after going through the contents of the said application, gave directions to register the said complaint as miscellaneous case and also called for a report from the Protection Officer. In compliance thereof, the Protection Officer, in order to get the inquiry being conducted, issued notice to the applicant, however, instead of replying to the said notice, applicant has filed an application before the Chief Judicial Magistrate seeking to quash the said proceedings instituted against her under Section 12 of the D.V. Act, which was rejected by the Chief Judicial Magistrate by the impugned order and the same was confirmed by the Additional Sessions Judge by means of the impugned order. As has been held by the learned Single Judge of the Madras High Court, the issuance of notice by the Chief Judicial Magistrate to

the Protection officer or for that matter a notice having been issued by the Protection officer to the appellant is not a summon under Section 61 of the Code of Criminal Procedure, 1973, but rather is to be construed as a notice as set out in Form VII appended to the D.V Rules, 2006. In fact, the Hon'ble Supreme Court in Kamatchi's case has held that the scope of notice under section 12 of the Act is to call for a response from the respondents in terms of the statute, so that after considering rival submission, appropriate order can be issued.

(25) No doubt, the proceedings under certain sections of the DV Act as specified in sub-section (1) of section 28 are to be governed by the Code of Criminal Procedure, 1973, however, at the same time, the legislature has also incorporated provisions like sub-section (2) of section 28 as well, which empowers the Court to lay down its own procedure for disposal of the application under Section 12 or Section 23(2) of the D.V. Act, which relates to ex-parte reliefs on the basis of affidavit in such form as prescribed under the rules. From time to time, this provisions has been held by the Courts that most of these reliefs are basically civil in nature. Thus, amendment was held to be maintainable under the provisions of D.V. Act (see **Kunapareddy v. Kunapareddy Swarna Kumari**, (2016) 11 SCC 774).

(26) However, submission of the learned Counsel for the applicant is that even if the submission of the learned counsel for the opposite parties no.2 and 3 is accepted that an application under Section 12 before the Magistrate is civil in nature, the fact that the Protection Officer had issued notice to the applicant upon which applicant had filed application for quashing of the proceedings initiated against her under Section 12 of D.V. Act, which was rejected by means of the impugned order and the same was affirmed by the impugned order, against which the present application under Section 482 Cr.P.C has been filed, ought to be allowed as the whole proceedings is an abuse of process of law and as such, he has relied on the case of **State of Haryana v. Bhajan Lal (supra).**

(27) This Court finds that learned Counsel for the respondent has submitted that application under Section 12 of the DV Act was filed *inter alia* on the ground that opposite parties in the complaint case including the applicant has failed to provide protection, residence and compensation to the complainants and her minor child which comes within the fold of 'economic abuse' as defined under Explanation I of clause (d) of Section 3 of the D.V. Act and as such, the proceedings before the learned Magistrate must be allowed to come to its logical end.

(28) Without looking into the other authorities cited by the parties, an observation as was held in the case of ***Bhajan Lal (supra)*** at para 102 and 103 would be sufficient to understand whether the petitioner has made out a case of interference by this Court under Section 482 Cr.P.C on merits. Paras 102 and 103 of Bhajan Lal's case reads as follows :-

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
>
> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
>
> *(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
>
> *(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute*

> *only a non-cognizable offence, no investigation is permitted by a police officer 13 without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
>
> *(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
>
> *(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
>
> *(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

(29) The relations between the parties are not denied. As far as the merits of the allegations as mentioned in the complaint is concerned, the response from the parties have to be filed, so that the same is considered by the Chief Judicial Magistrate. The provisions of section 482 Cr. P.C cannot be allowed to short-circuit the proceedings under the provisions of D.V. Act. Further, there is a rich precedent in the issue that the power of quashing a criminal proceeding under section 482 Cr.P.C should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the

complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. The allegation of not providing protection, residence and compensation to upkeep the complainant and her minor child is certainly a matter to be looked into by the trial Court and for this, parties have to prove their respective case. This would, thus, not qualify as satisfaction of any of the guidelines laid down at para 102 of the Bhajan Lal's case (Supra). It is also not one of the rarest of rare cases for this Court to take notice and invoke the powers under Section 482 Cr.P.C. The applicant on this front too, cannot convince this Court to decide in her favour.

(30) The judgments relied by the learned Counsel for the applicant is distinguishable in the facts and circumstances of the case and the same would not come to her rescue.

E. <u>Conclusion</u>

(31) Keeping in mind the totality of the facts and circumstances and the aforesaid decisions of the Hon'ble Supreme Court as well as the Hon'ble Madras High Court, this Court is of the considered view that the application made under Section 482 of Cr.P.C. challenging the proceeding under Section 12 of the D.V. Act is not maintainable.

(32) However, liberty is granted to the applicant to take recourse as provided under law, if so desires.

(33) The present application is, accordingly, **dismissed.**

(Om Prakash Shukla, J.)

Order Date : 31st July, 2024
Ajit