

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF APRIL 2021

BEFORE

THE HON'BLE MRS. JUSTICE K.S.MUDAGAL

CRIMINAL REVISION PETITION No.730/2019

BETWEEN:

SRI PUTTARAJU
S/O LATE MUDDAPPA
AGED ABOUT 55 YEARS
R/AT SHIVAKOTE VILLAGE AND POST
HESARAGHATTA HOBLI
BANGALORE NORT TALUK - 560 088 ... PETITIONER

(BY SRIRAJANNA L, ADVOCATE)

AND:

SMT.SHIVAKUMARI
W/O PUTTARAJU
AGED ABOUT 48 YEARS
R/AT SHIVAKOTE VILLAGE AND POST
HESARAGHATTA HOBLI
BANGALORE NORT TALUK - 560 088 ... RESPONDENT

(BY SRIPATEEL G.S. ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397
READ WITH SECTION 401 OF CR.P.C. PRAYING TO
SET ASIDE THE ORDER DATED 11.04.2016 PASSED BY THE II
ADDITIONAL CHIEF JUDICIAL MAGISTRATE, BENGALURU RURAL
DISTRICT, BENGALURU IN CRL.MISC.NO.206/2011 AND THE ORDER
DATED 16.04.2019 PASSED BY THE IX ADDITIONAL DISTRICT AND
SESSIONS JUDGE, BENGALURU RURAL DISTRICT, BENGALURU IN
CRIMINAL APPEAL NO.19/2016.

THIS CRIMINAL REVISION PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER ON I.A.No.1/2020

The respondent has filed the above application for release of Rs.4,32,000/- deposited before the trial Court in her favour.

2. The petitioner and the respondent are husband and wife. The respondent filed Crl.Misc.No.206/2011 against the petitioner before the trial Court under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('the DV Act' for short) seeking monetary relief and custody order as contemplated under Sections 20 and 21 of the DV Act on the ground that she was subjected to domestic violence in the hands of the petitioner.

3. The trial Court by order dated 11.04.2016 partly allowed the said petition, awarded Rs.8,000/- per month to the respondent and her children as maintenance and house rent. The petitioner was also restrained from taking away

the children from her custody and committing domestic violence.

4. The petitioner challenged the said order of the trial Court before IX Additional District & Sessions Judge, Bengaluru Rural District, Bengaluru in Crl.A.No.19/2016. The First Appellate Court granted interim stay subject to the petitioner depositing Rs.4,32,000/- before the First Appellate Court towards arrears of maintenance. Accordingly, the petitioner deposited the said amount before First Appellate Court.

5. Ultimately on hearing the parties, the First Appellate Court by the impugned order dismissed the appeal and confirmed the order of the trial Court. Further the First Appellate Court directed to transmit the amount in deposit to the trial Court with a further direction to the trial Court to release the said amount to the respondent wife.

6. Accordingly, the said amount is transmitted to the trial Court and pending in Court deposit. The respondent has

filed the above application seeking release of the said amount.

7¹. Sri L.Rajanna, learned Counsel for the petitioner opposes the application on the ground that the petition was filed 10 years from the date of the alleged domestic incident, therefore the petition itself was not maintainable. In support of his contentions he relies upon the following judgments:

- (i) ***Inderjit Singh Grewal v. State of Punjab & Anr.***¹
- (ii) ***J.Srinivas vs. G.Dhanalakshmi***²
- (iii) ***Gurudev & Anr. vs. Jayashree***³

8. Sri G.S.Pateel, learned Counsel for the respondent refutes the contention regarding limitation on the ground that Section 468 of Cr.P.C. is applicable only to the petition under Section 31 of the DV Act and not to the application under Section 12 of the DV Act filed for the reliefs under Sections 20 and 21 of the DV Act. In support of his contentions, he relies upon the following judgments:

- (i) ***Krishna Bhattacharjee v. Sarathi Choudhury***⁴
- (ii) ***Vikas and others v. Smt. Usha Rani & Anr.***⁵

¹ Cri.L.J.309

² Cri.P.No.2419/2009 DD 05.04.2013

³ Cri.P.No.11476/2013 DD 08.01.2014

⁴ (2016) 2 SCC 705

⁵ Cri.R.No.3084/2016 (O & M) DD 17.04.2018

9. The relationship between the parties is not in dispute. The only question for consideration is, for an application under Section 12 of the DV Act whether Section 468 of Cr.P.C. which prescribes the limitation is applicable?

10. Relying on Section 28 of the DV Act, learned Counsel for the petitioner submits that to file application under Section 12 of the DV Act, the Code of Criminal procedure is applicable. Therefore he submits that Section 468 of Cr.P.C. is applicable. Section 28(1) of the DV Act relied upon by learned Counsel for the petitioner reads as follows:

"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).***"

11. Reading of the above provision makes it clear that for the proceedings under Sections 12, 18, 19, 20, 21, 22, 23 and 31 of the DV Act, the Code of Criminal Procedure is applicable. Then he relies upon Section 468(2)(b) of Cr.P.C

which reads as follows:

"468. Bar to taking cognizance after lapse of the period of limitation

- (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an **offence** of the category specified in sub-section (2), after the expiry of the period of limitation.
- (2) The period of limitation shall be —

- (a)
- (b) one year, if the **offence** is punishable with imprisonment for a term not exceeding one year."

12. Reading of Section 468 (1) and 468(2)(b) of Cr.P.C. itself shows that the bar of limitation for taking cognizance is intertwined with an **offence**. Section 468 of Cr.P.C. comes into picture only if there is an offence. If there is no offence, no limitation.

13. Then the question is whether the act alleged in the application under Section 12 of the DV Act itself constitutes an offence by the respondent.

14. Section 12(1) & (2) of the DV Act which are relevant for our purpose read as follows:

"12. Application to Magistrate.— (1) 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:

Provided 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.

(2) The *relief* sought for under sub-section (1) may include a *relief for issuance of an order for payment of compensation or damages* without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the *acts of domestic violence* committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

Thus in Section 12 of the DV Act if domestic violence is not called or treated as an offence, it speaks of Court granting **relief** and not of **conviction** and **sentence**.

15. So far this petition, Sections 20(d) and 21 of the DV Act are relevant. They read as follows:

"20. Monetary reliefs.— (1) While disposing of an application under sub-section (1) of section 12, the Magistrate **may direct the respondent to pay monetary relief** to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person **as a result of the domestic violence** and such relief may include but is not limited to—

(a) (b)

... ..

(c)

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

... .."

21. Custody orders.— Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application **for protection order** or for any other

relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent:

Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit."

Therefore even Sections 20 and 21 of the DV Act do not treat the domestic violence as offence.

16. To attract Section 468 of Cr.P.C, essentially the Act alleged must be an offence. Under the DV Act, the offence is not defined, as defined in Section 40 of IPC. Therefore, we have to revert to the General Clauses Act, 1897. Section 3(38) of the General Clauses Act defines the offences as follows:

"3(38). "Offence" shall mean any act or omission **made punishable by any law** for the time being in force."

17. Perusal of the above provision makes it clear that to call an act as offence, act or omission must be made punishable under law. As already pointed out, under Sections

12, 20 and 21 of the DV Act have not made the domestic violence alleged thereunder punishable or defined them as offence. Section 12 of the DV Act is only an enabling provision to initiate enquiry to find out whether such act or omission is committed.

18. Section 31 of the DV Act is Penalty Clause which reads as follows:

"31. Penalty for breach of protection order by respondent.— (1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The **offence** under sub-section (1) **shall** as far as practicable **be tried by the Magistrate** who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) **While framing charges** under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the

case may be, if the facts disclose the commission of an offence under those provisions.”

19. Perusal of Section 31 of the DV Act makes it clear that only breach of the protection order or interim protection order etc. passed under Section 12 of the DV Act constitutes an offence and made punishable. As held by Punjab High Court in **Vikas's** case referred to *supra*, Section 12 of the DV Act is only enabling provision. Therefore it is clear that the act or omission contemplated under Section 31 of the DV Act is an offence and the application under Section 12 of the DV Act itself is not an offence.

20. When the application under Section 12 of the DV Act is not covered under the term 'offence', Section 468 of Cr.P.C. is inapplicable. Therefore the application of Section 468 of Cr.P.C. to an application under Section 12 of the DV Act is clearly a misconception.

21. One has to bear in mind that the proceedings under the DV Act are neither purely criminal nor civil proceedings. The very object of the DV Act as could be seen from the preamble is to protect the women against violence of any kind occurring

within the family. If at all the Act intended to make each and every Act of domestic violence offences, then Parliament would not have legislated separate law i.e. IPC dealing with offences against Women like 498A, 306, 304B or offences against body in Chapter XVI of IPC. The purpose of the DV Act is to protect and save the family.

22. In *Inderjit Singh Grewal's* case referred to *supra* it was held that there was already decree of judicial separation. In that context in para 25 of the judgment, it was held as follows:

"25. In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions of the Act 2005 is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the court. Undoubtedly, for quashing a complaint, the court has to take its contents on its face value **and in case the same discloses an offence, the court generally does not interfere with the same. However, in the backdrop of the factual matrix of this case,** permitting the court to proceed with the complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same."

(Emphasis Supplied)

23. Reading of the above paragraph shows that the Hon'ble Supreme Court also held that generally it does not interfere with such cases and in the backdrop of the factual matrix of the case, continuation of the proceedings amounts to abuse of the process of the Court.

24. Distinguishing judgment in ***Inderjit Singh Grewal's*** case, the Hon'ble Supreme Court in subsequent judgment in ***Krishna Bhattacharjee's*** case referred to *supra* held that the observation regarding domestic relationship in ***Inderjit Singh Grewal's*** case were based on the facts and circumstances of the said case and they are not of general application.

25. Further in para 32 of the judgment in ***Krishna Bhattacharjee's*** case referred to *supra*, the Hon'ble Supreme Court held that the definition of the aggrieved person and domestic relationship remains and the act of domestic violence attracts the term 'continuing offence', therefore does not get time barred.

26. In the judgments of the Hon'ble Supreme Court referred to above, the interplay of Section 3(38) of the General Clauses Act, Section 31 of the DV Act and Section 468 of Cr.P.C. had not fallen for consideration. In view of the later judgment of the Hon'ble Supreme Court in **Krishna Bhattacharjee's** case referred to *supra* the judgments of this Court in **Srinivas's** case and **Gurudev's** case cannot be followed. Therefore this Court does not find any merit in the contention that the petition was time barred. Under the circumstances the respondent is entitled for withdrawal of the amount. The application is allowed.

The trial Court shall release Rs.4,32,000/- to the respondent herein subject to the result of this petition.

At this stage, learned Counsel for the petitioner submits that trial Court awarded Rs.4,32,000/- as maintenance to the respondent including her children who are major. Therefore he submits only her share shall be released to her.

First of all the trial Court has not made any such apportionment. Secondly it was not the case of the petitioner/husband that children and mother have any

conflicting interest nor he examined any children before the trial Court to state so. Therefore this Court finds the said submission as vexatious and rejected accordingly.

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