

**IN THE HIGH COURT OF UTTARAKHAND AT  
NAINITAL**

**CRIMINAL MISC. APPLICATION No. 833 of 2010**

(Under Section 482 of Cr.P.C.)

Nirmal Jeet Kaur W/o Shri Trilok Singh R/o Ram Nivas  
Opp Hilton School Majara, Police Station Paterl Nagar,  
District: Dehradun, Uttarakhand.

.....Petitioner

Versus

1. State of Uttarakhand, through home  
Secretary Dehradun
2. Trilok Singh S/o Sadhu Singh Mand
3. Niranjana Kaur W/o Sadhu Singh Mand  
Both R/o Ram Nivas Opp Hilton School  
Majara, Police Station Patel Nagar, District:  
Dehradun, Uttarakhand

.....Opposite Parties

**Smt. Prabha Naithani, Advocate, present for the petitioners.**  
**Shri Vipul Painuli, A.G.A. present for the State.**  
**Shri Hari Mohan Bhatia, Advocate present for the respondent no.2 &  
3.**

**Hon'ble Prafulla C. Pant, J.**

Heard.

(2) By means of this petition moved under  
Section 482 of Cr.P.C., the petitioner has sought

quashing of the order dated 28.05.2010 passed by Additional Chief Judicial Magistrate II, Dehradun in Case no. 201 of 2010, whereby said court allowed an application 18-A moved by the respondent no. 2 and 3, and set aside ex-parte order dated 16.02.2010 on payment of costs of ₹ 1,500/- to the petitioner. The petitioner has further challenged before this Court order dated 28.08.2010 passed by the appellate Court (Additional District Judge IV at Dehradun) in Criminal Appeal No. 45 of 2010, whereby said Court has affirmed the order passed by the Additional Chief Judicial Magistrate on 28.05.2010.

(3) Brief facts of the Case are that the petitioner Nirmal Jeet Kaur got married to the respondent no. 2, Trilok Singh on 23.12.2005, and a son Master Harpreet SinghWalia @ Paras born out of the wedlock on 29.11.2007. Thereafter it appears that relations between the parties to matrimony got soured and the petitioner Nirmal Jeet Kaur moved an application under Section 12 read with Section 18, 19, 20, & 21 of Protection of Women from Domestic Violence Act-2005. In said Case

learned Additional Chief Judicial Magistrate II Dehradun on receipt of report of Protection Officer relating to alleged cruelty, as an interim measure directed the respondent no. 2 Trilok Singh (Husband) and respondent no. 3 Niranjana Kaur (Mother-in-law of the petitioner) not to oust them from the house situated at Ram Nivas, Majara Opposite Hilton School, within the limits of Police Station Patel Nagar, Dehradun, till the pendency of the case. Said order was an ex-parte order. Thereafter the respondents put up their appearance and moved an application on 18-A for setting aside ex-parte order dated 16.02.2010, and hear to matter on merits, with the pleading that the respondents had no knowledge of proceedings till 17.02.2012. The petitioner filed objection 26-C before trial Court against said application and after hearing the parties, the trial Court allowed application 18-A and set aside order dated 16.02.2010 on payment costs of ₹ 1,500/- to the petitioner. Aggrieved by said order the petitioner filed Criminal Appeal, which is dismissed by learned Additional District Judge IV, Dehradun vide impugned order dated 28.08.2010. Hence

this petition.

(4) Learned counsel for the petitioner argued before this court that the Magistrate erred in law in setting aside ex-parte interim order as there was no such power with him under the Protection of Women from Domestic Violence Act-2005. It is further contended that the ex-parte interim order, passed on 16.02.2010 was in consonance of Section 23 of the Act which empowers of the Magistrate to pass to grant interim an ex-parte orders.

(5) On the other hand, in reply to above, learned respondent no.2 & 3 drew attention of this Court to sub-Section (2), of Section 28 Protection Of Women From Domestic Violence Act 2005, which reads as under:

*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 Section Sub Section (23).*

(6) As to the procedure of the proceeding under Protection Of Women From Domestic Violence Act-2005 sub-Section (1) of sub-Section (28) provides that save as otherwise provided in the

Act of proceeding under Section 12, 18, 19, 20, 21, 22, & 23 and under Section 31 shall be governed by the provision of Code of Criminal Procedure 1973.

(7) The question, before Court, is that whether in the light of expression " its own procedure for proposal of an application", can the Magistrate recall its order passed under Section 23 or not. Certainly said expression does not give the Magistrate power to pass arbitrary orders or to pass such an order which is against the known basic principles of judicial procedure. In the opinion of this Court what aforesaid expression authorities the Magistrate is that he can pass such an order which are in consonance of the basic principles of judicial procedure. It is pertinent the mention here that proceeding based on an application under Section 12, the Protection Of Women From Domestic Violence Act-2005 are not the proceeding of trial of an offence. Rather such proceedings are quasi civil in nature, like the one under Section 125 of Cr.P.C. If we look in the Code of Civil Procedure 1908, we find that there is provision under rule 7 of Order IX of the

Code which empowers of the Court to set aside the order directing to proceed ex-parte. Under rule 13 of Order IX of the code trial courts have powers to set aside the ex-parte decree on sufficient cause being shown by the defendant. Similarly under the Code Criminal Procedure 1973, in respect of proceedings under Section 125 of Cr.P.C., there is proviso to sub-Section (2) of Section 126 which empowers the Magistrate to recall an ex-parte order. As such setting aside of ex-parte order by the Magistrate under the Protection of Women from Domestic Violence Act-2005 cannot be said to be arbitrary or against the basic principles of judicial procedure, particularly when sub-Section (2) of sub-Section 28 of the Act, provides that nothing in sub-Section (1) shall prevent the Court from laying down its own procedure for disposal of an application under Section 12 or sub-Section (2) of Section 23.

(8) Therefore, in the light of the above discussion this court is not inclined to interfere with the impugned orders passed by the Courts below. Accordingly, the petition under Section

482 Cr.P.C. is dismissed with the observation that the petitioner shall not be evicted from matrimonial house mentioned in order dated 16.02.2010, till the interim application moved by the petitioner is decided on merits by the Magistrate in pursuance of order dated 28.05.2010. It is, further observed that interim application shall be decided in the spirit contained in sub-Section (5) of Section 12 of the Act, expeditiously.

**(Prafulla C. Pant, J.)**

16.08.2012

Anand