

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL. M.C. No. 1784/2009**

% Judgment delivered on: 12.10.2009

Manish Tandon & Ors. Petitioners
Through: Mr. Varun Goswami, Advocate

versus

State & Anr. Respondent
Through: Mr. Sanjay Lao, APP for State.
Mr. Ayush Gupta, Advocate for
R-2.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J.

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1. By way of the present petition filed under Section 482 Code of Criminal Procedure, 1973 petitioners seeks quashing of complaint case bearing no. 156/1 titled as "Ms. Gunjan Tondon Vs. Sh. Manish Tondon &

Ors.” filed by the respondent No. 2 against the petitioners under Section 12 of the Protection of Women from the Domestic Violence Act, 2005.

2. The brief facts of the case relevant for deciding the present petition as set out by the petitioners are as under:

That the marriage of the petitioner No. 1 was solemnized with the respondent No. 2 on 23.01.2009 at the Community Centre in Sector-52, Noida (UP) according to Hindu rites and customs. All the petitioners are the permanent residents of the State of Uttar Pradesh. In fact, admittedly, the respondent No. 2 is also a permanent resident of Noida (UP) being Mahagun Manor, Flat No. 417, Plot No. F-30, Sector-50, Noida.

3. That the marriage of the petitioner No. 1 and Respondent No. 2 was an arranged marriage and the acquaintance between them came through a popular matrimonial website known as “Jeevansathi.com”.

4. That after the aforesaid marriage, the respondent No. 2 joined the conjugal company of the petitioner No. 1 at her matrimonial home in Bareilly (UP), at H.No. 17, Madaari Gate, Bada Bazaar. However on account of his employment with M/s. Malayalam Manorma, in Delhi, the petitioner

No. 1 has been living in a rented accommodation in Ghaziabad at the aforesaid address.

5. That on 16.03.2009, the respondent No. 2 left her matrimonial home in Uttar Pradesh and started living with her relatives including parents, in Noida Flat No. 417, Plot No. 30, NOIDA.

6. That thereafter on 24.03.2009, loaded with patently frivolous, false and vexatious averments, despite being permanently residing in Noida, the respondent No. 2 in a most cunning and malicious manner, with the sole objective to cause undue harassment, hardships and mental torture to the petitioners, filed the impugned complaint in the court of the Additional Chief Metropolitan Magistrate, New Delhi which was subsequently marked to Ms. Veena Rani, MM, Patiala House, New Delhi for trial in accordance with law. The said complaint is now posted on 02.07.2009 for further proceedings.

7. Feeling aggrieved with the said complaint filed by the respondent under Section 12 of the Protection of Women from the Domestic Violence Act, 2005 the petitioners have approached this Court seeking quashing of the said complaint.

8. The contention of counsel for the petitioners is that the courts in Delhi have no territorial jurisdiction to entertain and try the impugned complaint as the same has been filed by the respondent no. 2 in a court which lacks jurisdiction. He urged that none of the alleged acts of domestic violence qua respondent no. 2 took place in Delhi and as per the admission of the respondent no. 2 the marriage was solemnized at Noida, and her matrimonial home was either in Bareilly or Ghaziabad. Respondent no. 2 even admitted having been staying at Noida after she left her matrimonial home on 16/3/2009 and reason placed for residing temporarily at Delhi is that, her acutely ill paralytic mother's condition may deteriorate upon seeing her daughter staying with her. The counsel averred that, after 16/3/2009 alleged domestic violence are not in continuance. The counsel for petitioner submitted that the respondent no. 2 is misusing and abusing the provision of Section 27 of the Protection of Women From Domestic Violence Act has been laid down for beneficial support of needy and destitute persons and certainly not for a person like respondent no. 2 who is a malafide litigant with all vexacious claims and thus the proceedings pending before the trial court should be quashed. The counsel relied on decisions in following judgments in support of his contentions:

1. **Surjit Singh Kalra vs. UOI – (1991) 2 SCC 87;**
 2. **S.R. Batra vs. Tarun Batra – 2007 (2) SCC (Cri) 56;**
 3. **Harman Electronics vs. National Panasonic – 156 (2009) DLT 160 (SC);**
 4. **K.D. Mathpal vs. State – 132 (2006) DLT 398 (DB);**
 5. **P.C. Jain vs. P.K. Soni – 156 (2009) DLT 760;**
 6. **Harmanpreet vs. State of Punjab – JT (2009) 6 SC 375; and**
 7. **Y. Abraham vs. Inspector of Police – (2004) 8 SCC 100.**
9. Per contra, counsel for respondent no. 2 contended that the present petition is nothing but an abuse of the process of the court merely taking up the precious time of the court and should be dismissed forthwith. The counsel drew attention of this court to Clause (b) of sub-section (1) of Section 27 of Protection of Women From Domestic Violence Act to contend that the section provides that jurisdiction to try the case under the Act also lies where the respondent resides or carries on business or is employed. The counsel for respondent No. 2 relied on decision in **Smt. Darshan Kumari vs. Surinder Kumar – 1996 SCC (Cri) 44** in support of his contentions.

10. I have heard Ld. Counsel for the parties at length and perused the record.

11. It is a well settled principle that the under provisions of S. 482 Code of Criminal Procedure, 1973, exercise of power should be an exception and not the rule. Explaining the scope of S. 482 Code of Criminal Procedure, 1973, the Hon'ble Apex Court observed as under in ***Ashabai Machindra Adhagale v. State of Maharashtra,(2009) 3 SCC 789:***

8. The scope for interference on the basis of an application under Section 482 of the Code is well known.

9. "8. ... [Section 482] does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of [the Code]. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under [the Code], (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle of '*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsa esse non potest*' (when the law gives a person anything, it gives him that without which it cannot exist). While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of

justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

9. In *R.P. Kapur v. State of Punjab*⁶ this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings: (AIR p. 869, para 6)

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

10. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 [of the Code], the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. The court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.

12. Thus, clearly the inherent jurisdiction may be exercised by this court, (i) to give effect to an order under [the Code], (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice.

13. At this juncture it would be relevant to refer to S. 27 of the PWDV Act, which is as under:

27. Jurisdiction.-(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.

14. A bare perusal of the aforesaid provision clearly brings out, that the court, where the respondent resides or carries on business or is employed has territorial jurisdiction to entertain the case under the Protection of Women From Domestic Violence Act. The fact that the petitioner/husband's place of work is at Malyalam Manorama, 56, II Floor, Janpath, New Delhi is not disputed and is admitted by the petitioner husband.

15. The Protection of Women from Domestic Violence Act, 2005 is a piece of legislation brought in by the Parliament as the Parliament felt that the civil law does not provide reliefs to a victim woman subjected to domestic violence. It is in these circumstances, to provide for a remedy under the civil law for protection of women from being victims of domestic violence, that the Act was brought in by the Parliament. It will be apposite to take note of the fact that though it is a piece of civil law, evidently in the

interests of expedition and to cut down procedural delays, the forum provided for enforcement of rights under Protection of Women From Domestic Violence Act is that of the Magistrate Courts constituted under the provisions of the Cr. P.C.

16. The Act seeks to cover those women who are or have been in a relationship with the abuser, where both parties have lived together in a shared household and are related by consanguinity, marriage or a relationship in the nature of marriage, or adoption; in addition relationship with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or are living with the abuser are entitled to get legal protection under the Act.

17. Keeping in mind the said objects of the Act, it has to be considered that the legislature has provided the women covered under the Act with such wide options to institute a case against the unscrupulous persons who harass or abuse her at the places covered under Section 27 of the Act with an intent that women may opt for the place which best suited their convenience, comfort and accessibility.

18. The decisions relied upon by the counsel for the petitioners are of no assistance to them as the said cases do not pertain to interpretation of

provision of Section 27 of PWDV Act. Be that as it may, when the language of the Section is so clear and unambiguous then the court cannot interpret or construe the same differently just to give effect to the wishes of the party.

19. In view of the foregoing discussion, I do not find any merit in the present petition and the same is hereby dismissed.

12th October,2009

KAILASH GAMBHIR, J.