

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 379 of 2023

Sk. Sadab Kadir & others

... Petitioners

Mr. D. Panda, Advocate

-versus-

Saher Saniya

...Opp. Party

**CORAM:
JUSTICE CHITTARANJAN DASH**

**ORDER
01.12.2023**

Order No.

07.

1. Heard learned counsel for the Petitioners and the State.
2. By means of the present application, the Petitioners seek the indulgence of this Court praying to quash the criminal proceeding in Criminal Misc. Case No. 134 of 2022 pending before the learned S.D.J.M., Angul.
3. The background facts of the case are that the Opposite Party No.2 initiated a proceeding U/s. 12 of the Protection of Women from the Domestic Violence Act, 2005 (herein after called the "PWDVA") against the Petitioners seeking various reliefs under the said Act registered as Criminal Misc. Case No. 134 of 2022 alleging that the Opposite Party No.2 got married to the Petitioner No.1 on 03.02.2021 in accordance with the Muslim Personal laws and her father had given a dowry i.e. the fixed deposit of Rs.3,00,000/- besides ornaments, furniture and other household articles as per the

demand of the bride groom side. Subsequent to the marriage, the bride groom side demanded further sum of Rs.10,00,000/- or Kia Seltos car. Due to non-fulfillment of the said demand, the O.P. No.2 was assaulted by the Petitioner No.1 with slaps and kicks, they stopped giving her food and restrained her from talking to her parents. Few days thereafter when the Petitioner No.1 and the complainant shifted to Hyderabad, the Petitioner No.1 asked her to demand money from her father for purchasing a flat in an apartment and on her refusal, he allegedly to have assaulted her and she could over hear that the Petitioner No.1 would kill her by using pillow for which she asked her father to come and rescue her. The Opposite Party also narrated various instances and mental harassment and trauma inflicted on her by the Petitioners.

4. The Petitioners denying the above allegations, inter alia, contended that the proceeding is not maintainable since the same has not been filed in consonance with the statute which requires the application to be filed in accordance with Rule-6 of the Protection of Women from Domestic Violence in Form No.II and affidavit to be filed in Form No.III and the rules having not complied with by the Opposite Party in the complaint, the same is required to be quashed.

5. In course of argument however, the learned counsel for the Petitioners emphatically pointed out that the report from the Protection officer having not furnished in the complaint violates the relevant provision and the same being mandatory in nature the complaint is not maintainable.

6. Learned counsel for the State on the other hand vehemently opposed the contentions raised by the learned counsel for the Petitioners.

7. Needless to mention that the PWDVA is a civil law that defines domestic violence, recognizes women's rights to reside in a violence-free-home and provides remedies in cases of violation of this right. In its Statement of Objects and Reasons, the PWDVA recognizes domestic violence as a serious human rights concern and deterrent to development. It further mentions that since existing criminal law does not address this phenomenon in its entirety, there is a need to enact a civil law aimed "to provide for more effective protection of rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family".

8. Section 12(1) requires the Magistrate to take into consideration the Domestic Incident report. However the Domestic Incident Report is not mandatory for passing orders and/ or shall be taken into consideration only in cases where it has been filed.

9. The Apex Court in the matter of *Nandkishor vs. Kavita and Ors. MANU/MH/0957/2009* held that the trial court can grant relief under the Act without considering the report of Protection Officer. Observation of the court: The point as regards calling of the report from the Protection Officer or Service Provider is concerned one will have to interpret provisions of Section 12 of the Act and the said interpretation has to be in favour of the person, who is in need of maintenance and in particular interim maintenance. Report from the Protection Officer or Service Provider has to be gathered and it

would assist the Court for the purposes of doing complete justice in the matter. At the same time, it is expected that the trial Court has to pass an interim order as early as possible. If the trial Court, who is required to pass an interim order, keeps on waiting to get the report of the Protection Officer or Service Provider, it would entail the delay and the idea of considering the case of a needy person at the interim stage will be actually defeated. Therefore, the court observed that it is not necessary in each and every case to obtain a report from the Protection Officer or Service Provider to decide application for interim relief. If on the basis of record before the Court, the Court is in a position to arrive at a just and proper conclusion, it will be open for the Court to do so.

10. The Apex Court in the matter of *Ajay Kaul & ors. v. State of J&K MANU/JK/0075/2019* reiterating the earlier view held that before passing any order under section 12 of the Act, it is not mandatory for the judicial magistrate to consider DIR i.e. “Domestic Incident Report” and observed as follows:

On a conjoint reading of Sections 9 and 12 of the DV Act, it is manifestly clear that it is duty of the Protection Officer to work under the control and supervision of the Magistrate and to perform duties imposed upon him by the Magistrate and in case, he has received a complaint on domestic violence then to make a domestic incident report and submit it to the Magistrate, as well as to forward copies of the complaint to the Police Officer in charge of the police station within local limits of whose jurisdiction, domestic violence is alleged to have been committed. The proviso added to Section 12(1) of the DV Act is only to the effect that in case a domestic incident report has been received by the Magistrate, the same

shall be considered before passing any order on an application received. **Section 12 of the DV Act per se does not hold that a Magistrate on receipt of complaint is obligated to call for a domestic incident report, before passing any order on an application. So it is not mandatory for a Magistrate to obtain a domestic incident report before the Magistrate passes any order provided under various section of Act;** so receipt of domestic incident report is not a pre-requisite for issuing a notice to the respondent. Magistrate, on the basis of an application supported by affidavit, on being satisfied can even grant ex parte orders in favour of the aggrieved person under Sections 18, 19, 20, 21 or 22 of the DV Act. Proviso to Section 12(1) only stipulates that the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider. Section 12(1) does not directly stipulate that a report 'shall' be called for, before any relief can be granted.

11. In view of the principles enunciated as above, the solitary ground on which the Petitioner assailed the complaint finds no merit to sustain.

12. The CRLMC being devoid of merit stands dismissed.

(Chittaranjan Dash)
Judge

Bijay