

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Revision Petition No. 335/2023

1. Kailashi @ Lali
2. Dharma /
3. Shersingh
4. Butasingh S/o Ramsahay,
5. Veena D/o Shivcharan
6. Rajkumari W/o Yogendra
7. Sunita W/o Satish

----Petitioners

Versus

Ramkripa

----Respondent



For Petitioner(s) : Mr. Abhishek Bharadwaj.
For Respondent(s) : Mr. Vishwas Sharma.

सूची-प्रतिलिपि

प्रशासनिक अधिकारी न्यायिक
राजस्थान उच्च न्यायालय पीठ,
जयपुर

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN
Order

17/10/2023

Instant revision petition is preferred aggrieved from order dated 17.02.2023 in Criminal Appeal No. 10.2022, whereby learned Addl. Sessions Judge No.1, Hindaun City, District – Karauli

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dismissed the appeal against order dated 28.04.2022 in Criminal Case No. 04/2021 filed by respondent against petitioners.

Learned counsel for the petitioners while relying upon judgment of Hon'ble Supreme Court in case of **Shyamlal Devda & Ors. v. Parimala : MANU/SC/0076/2020**, has submitted that the petition under DV Act can be filed in a Court, where the person aggrieved of domestic violence is resides. He also submitted that no incident of domestic violence committed by the petitioners were alleged in entire petition, therefore, the petition was filed just to harass the petitioners. He specifically referred the judgment of **Pramod Kumar Choudhary v. Anita Choudhary and Ors.: MANU/RH/2609/2015** and submitted that petitioners are distant relatives of respondent-applicant and no incident of domestic violence were established against any of petitioners, therefore, the petition cannot be survived against the present petitioners. He also referred the judgment of **Vijay Verma v. State N.C.T. of Delhi & Ors.: MANU/DE/1946/2010; Anoop and Ors. v. Vani Shree : MANU/PH/3549/2014 and A.K. Srinivasa Rao & Ors. v. The State of A.P. & Ors.: MANU/AP/0117/2015** and submitted that unless domestic relationship with aggrieved person is established, no petition can be filed under Section 12 of D.V. Act. He also submitted that neither petitioners are residing with respondent-applicant nor they were having any direct nexus with alleged domestic violence. He specifically referred judgment of Hon'ble Supreme Court in case of **Kahkashan Kausar & Ors. v. State of Bihar & Ors.: MANU/SC/0163/2022** and **Kamlesh Devi v. Jaipal & Ors.: MANU/SCOR/36609/2019** and



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submitted that merely on the basis of fact that the petitioners are relatives of husband of applicant, a petition cannot be instituted. He further submitted that the order of Hon'ble Pujab and Haryana High Court was upheld by Hon'ble Supreme Court. He also submitted that averment in petition itself makes it clear that only on apprehension present petitioners were arrayed as respondents in petition under Section 12 of DV Act. He also submitted that in para-16 only monitory relief for compensation was sought against the petitioners, therefore, institution and continuation of petition against the petitioners is just an abuse of process of law.

Aforesaid contentions were opposed by learned Public Prosecutor and learned counsel for the complainant.

Learned counsel for the complainant submitted that petitioners are relatives of husband of applicant-respondent and they all are indulged in domestic violence, so the instant petition is filed against them. He also submitted that from material available on record, domestic violence against petitioners will be proved from evidence during inquiry.

Heard learned counsels for the parties and learned Public Prosecutor. Perused the record and also perused the judgment of Hon'ble Supreme Court and coordinate Benches of different High Courts.

We have taken note of judgment of Hon'ble Supreme Court in aforesaid cases and also coordinate Benches of this Court, Delhi High Court, Punjab & Haryana High Court and Andra Pradesh High Court as well.

The petitioners are relatives of respondent-applicant and admittedly they are not residing with respondent-applicant. In



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para-16 of the application, a compensation of Rs.10 Lakh as monetary relief was demanded, but for what action, the petitioners are liable, is not specifically found place in the petition itself. Nowadays, it is fashion to array all relatives of husband whether they are connected with domestic violence or not. Herein after perusing the copy of petition and the allegations against the present petitioners, we can certainly say that it is just an abuse of process of law that the Trial Court continued the petition against the present petitioners and further the Appellate Court did not considered the role of present petitioners.

It is duty of everyone, who has instituted any criminal proceedings against anyone to specifically state the role and act of particular individual against whom the petition was filed. Similarly before issuing process the learned Magistrate is duty bound to consider that whether sufficient material or ground is available for him to issue process. The issuance of process is just an application of mind and it is not a mechanical process, but herein it appears that present petitioners were arrayed as non-applicants in petition under Section 12 of DV Act because they are relatives of husband of respondent-applicant. Once the fact is established that neither the applicant was under an obligation to receive any maintenance from present petitioners nor applicant was residing in a joint family with petitioners then the role of petitioners has to be specified by specific averments, but nothing is available on record, which means just to harass present petitioners, this petition under Section 12 of DV Act was filed, therefore, the learned Trial Court without considering the grounds had dismissed the application and so the Appellate Court.



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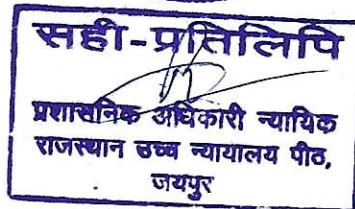
The continuation of proceedings against the petitioners is just an abuse of process of law, hence, the present revision petition is liable to be allowed.

In view of aforesaid, the revision petition against order dated 17.02.2023 and 28.04.2022, is hereby allowed and order dated 17.02.2023 and 28.04.2022 are set aside. As a result, the petition under Section 12 of DV Act filed against the present petitioners stands dismissed and the petitioners are discharged, but same will continue against remaining non-applicant(s).

Misc. application, if any, stands disposed of.

(ASHOK KUMAR JAIN), J

PKS/482



30/11/23

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