

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH



DATED THIS THE 10TH DAY OF DECEMBER 2021

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL PETITION No.200009/2021

BETWEEN:

1. MAREPPA
S/O GURUPADAPPA FANDILOLU
AGE 60 YEARS, OCC.PENSIONER
R/O NEAR NATIONAL PARK
BLOCK NO.71, SONY NAGAR
VIJAYANUR ROAD, SHOLAPUR
MAHARASTRA STATE 413 004.
2. SULOCHANA W/O VENKATESH
AGE 50 YEARS, OCC.HOUSE HOLD
R/O MIG 23, KHB
BEHIND VISHWABHARATI COLLGE
AKKAMAHADEVI COLONY
NEAR HIGH COURT
KALABURAGI 585107.
3. J N VENKATESH
S/O MAREPPA
AGE 54 YEARS, OCC.OFFICE MANAGER LIC
R/O MIG 23 KHB
BEHIND VISHWABHARATI COLLEGE
AKKAMAHADEVI COLONY
NEAR HIGH COURT
KALABURAGI 585107

4. JAYASHREE
D/O SHAMBULING FUNDILOLU
AGE 46 YEARS, OCC.LECTURER
AT GOVERNMENT DEGREE COLLEGE
RAICHUR

...PETITIONERS

(BY SRI K.M.GHATE, ADVOCATE)

AND:

PUSHAPANJALI
W/O VIVEK @ VIVEKANANDA FANDILOLU
AGE 30 YEARS, OCC.TEACHER OF
GOVERNMENT PRIMARY SCHOOL
R/O HOUSE NO.11-789/1
BASAVANAGAR
KALABURAGI-585104.

...RESPONDENT

(BY SRI V.M.ASHRIT, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING THIS COURT TO QUASH THE COMPLAINT FILED BY COMPLAINANT/ RESPONDENT IN CRIMINAL MISC.NO.1716/2020 FOR THE OFFENCES PUNISHABLE U/SEC. 12, 18(A)(f), SEC. 19(F), SEC.22 OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005 ON THE FILE OF SECOND ADDL. CIVIL JUDGE AND JMFC KALABURAGI AND PLEADED TO QUASH HIS SUMMONS ISSUED U/SEC. 61 OF CR.P.C ON DATED 21.11.2020, SUMMON IN THE PETITIONERS.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 30.11.2021 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

This petition is filed under Section 482 of Cr.P.C. praying this Court to quash the complaint filed by the complainant/respondent in CrI.Misc.No.1716/2020 for the offences punishable under Sections 12, 18(A)(f), 19(F), 22 of the Protection of Women from Domestic Violence Act, 2005 (for short 'DV Act') on the file of II Additional Civil Judge and JMFC, Kalaburagi summoning the petitioners herein vide order dated 21.11.2020.

2. The factual matrix of the case is that the respondent herein has filed the complaint under DV Act against the petitioners and also against her husband invoking the aforesaid offences seeking the relief envisaged under Sections 18, 19 and 22 that is seeking protection against committing any act of domestic violence, causing violence on the complainant and

directing the petitioners herein to stay away from the complainant or relatives or any other persons and prohibit violence against them and provide alternative accommodation and also seeking direction to pay compensation and damages for physical and mental torture and emotional distress which are caused by the acts of domestic violence by the petitioners herein and to pay the rent of Rs.10,000/- per month to the complainant for alternative accommodation and grant other relief that is police assistance. The Trial Court after considering the contents of the complaint, issued notice against these petitioners and also against her husband. Hence, the present petition is filed.

3. The main contention of the petitioners herein that these petitioners are not residing in a common shelter or they are sharing common mess. On reading of the entire complaint averments, nothing is alleged against the petitioner No.1 because he being the uncle of the respondent/complainant's husband and hence, no

complaint under Section 2 of the DV Act is maintainable. The learned Magistrate totally committed an error in issuing the summons. The petitioner No.1 resides in Sholapur and petitioner No.4 resides at Raichur. Petitioner Nos.2 and 3 resides at Akkamahadevi colony, Kalaburagi and moreover they are Government servants. The story of ill-treatment, influence on the husband of the complainant demanding of additional dowry is totally false and the allegations are based upon malafide intention of the complainant to drag the petitioners to the Court of law. The learned Magistrate has not applied its mind while issuing the summons under Section 61 of Cr.P.C and not appreciated the contents of the complaint which does not constitute any offence under the provision of law and it appears to be a dispute between the complainant and her husband and the complainant had already filed the petition for restitution of conjugal rights and it requires interference of this Court.

4. The counsel appearing for the petitioners vehemently contended that the very petition filed before the Trial Court is nothing but an abuse of process. Hence, this petition filed under Section 482 of Cr.P.C is maintainable. The Trial Court has not passed any reasoned order while issuing the notice. The petitioners are the uncle and married sister and no relief is sought against the petitioners and the relief is also sought for protection from domestic violence and these petitioners are not residing along with the husband of the complainant and the relief which has been sought in the petition can be granted in favour of these petitioners and hence, the complaint itself is not maintainable.

5. Per contra, the counsel appearing for the respondent would vehemently contend that this petition is filed under Section 482 of Cr.P.C and issuance of notice against these petitioners cannot be challenged under Section 482 of Cr.P.C and the relief is also sought for compensation for physical and mental torture and apart

from that protection is sought for domestic violence. The counsel in support of his arguments would contend that Section 2(q) of the DV Act is clear that the "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act: Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner. When such definition of Section 2(q) is broad in nature and it is specifically says that the complainant can file a complaint against the relative of the husband of the petitioner, it cannot be contended that the complaint is not maintainable against these petitioners. The counsel also would contend that the legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Act and hence, it cannot be contended that the petition is not maintainable.

6. The counsel also brought to the notice of this Court Section 3 of the DV Act with regard to the meaning of 'domestic violence'. The counsel also relied upon the judgment reported in **LAWS(DLH)-2007-10-131 MAYA DEVI W/O SH.HARI KISHAN BHENDWAL vs STATE OF N.C.T. OF DELHI JAI SHREE D/O SH. JYOTI SWAROOP BHARTIL**. The counsel referring this judgment brought to the notice of this Court that the Delhi High Court referring Sections 25, 29 and also discussing the scope of the appeal held that when specific remedy by way of appeal or by way of alternation, modification or revocation of any order, has been provided under the Act, prima- facie, the present petition under Article 227 of the Constitution of India or Section 482 Cr.P.C. is not maintainable before this Court and it is open to the party under specific Act and the High Court will not interfere under Section 482 of Cr.P.C and hence, contend that this petition under Section 482 of Cr.P.C is not maintainable.

7. The counsel also relied upon the judgment of the Gauhati reported in **LAWS(GAU)-2011-6-30 BASIT (MD.) vs STATE OF ASSAM** and brought to the notice of this Court that the Gauhati High Court made an observation on the judgment of Madhya Pradesh High Court rendered in the case of **AJAY KANT AND OTHERS vs SMT. ALKA SHARMA** reported in **2008 CRLJ 264** and also the judgment of Jharkhand High Court rendered in the case of **RAKESH SACHDEVA AND OTHERS vs STATE OF KHARKHAND AND ANOTHER** reported in **2011 CRLJ 158** with regard to calling of report may be necessary only before passing final order and not before issuing the notice and also brought to the notice of this Court the paragraph 12, wherein, it is discussed with regard to the impleadment of female members of the family as respondents in the complaint, the definition of 'domestic relationship' given under Section 2(f) of the D.V. Act needs to be looked into. Under the said definition any person who has a relationship with the aggrieved person or had a relationship at any point of time or lived together in a

shared house of related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family can be impleaded as respondents in the complaint, provided any such person has committed domestic violence as defined in Section 3 and similarly the question was discussed in paragraph 13 and an observation is made that the respondents who have been impleaded in the complaint petition, are not the family members nor is there any dispute that the complainant did not live with them in a joint family at any point of time and also taken note of Section 2(q) defines a respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the said proviso widens the scope of the said definition by including a relative of the husband or male partner within the scope of a complaint and no restrictive meaning has been given to the expression 'relative' nor has the said expression been specifically defined in the DV Act and hence, the counsel referring

those judgments would contend that the complaint filed by the respondent-complainant is maintainable.

8. In reply to the arguments of the learned counsel for the respondent, the learned counsel for the petitioners had relied upon the judgment of this Court in the case of **PRAKASH AND OTHERS vs SARITA** reported in **2019(3) KAR. L.J. 722** wherein also this Court has discussed scope of Sections 12, 2(a), 2(f) and 2(q) of the DV Act and entertained the petition under Section 482 of Cr.P.C and partly allowed the petition quashing the proceedings and hence, the petition is maintainable under Section 482 Cr.P.C.

9. The counsel also relied upon judgment of Division Bench of this Court in the case of **MRS.ANJULA DIVEDI AND OTHERS vs STATE REP. BY SUB-INSPECTOR OF POLICE, KYATHASANDRA POLICE STATION, TUMKUR** reported in **ILR 2016 KAR 1899** wherein also the Division Bench referring the judgment of the Apex Court particularly in **AIR 2009 SC 1032**

between **DHARIMAI TOBACCO PRODUCTS LIMITED AND OTHERS vs STATE OF MAHARASHTRA AND ANOTHER** and other judgments of the Apex Court right from **R.P.KAPUR's** case reported in **AIR 1960 SC 866** to **SOM MITTAL's** case reported in **(2008) 3 SCC 574** and taking note of paragraph 8 only because a revision petition is maintainable, the same by itself, in our considered opinion, would not constitute a bar for entertaining an application under Section 482 of Cr.P.C. Ultimately, the Court has laid down the criteria for entertaining the petition filed under Section 482 of Cr.P.C and also referred several judgments in the order which held that those rulings make it abundantly clear that when an alternative remedy is available, the party may approach the revisional Court seeking the remedy. Apart from going to the revisional Court, he can also approach the High Court or Supreme Court, if his case falls under the object recognised under Section 482 of Cr.P.C. Hence, the very contention of the counsel for the petitioners is that the

petition filed under Section 482 of Cr.P.C is maintainable cannot be accepted.

10. The counsel also relied upon the judgment of the Apex Court in **LAWS(SC)-2012-2-74** between **OM KUMAR DHANKAR vs STATE OF HARYANA** and brought to the notice paragraph 6 wherein also the second respondent challenged the summoning order in Criminal Revision before the Sessions Court and also brought to notice paragraph 9 wherein referring several judgments of the Apex Court, the Apex Court held that it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and therefore, the bar under sub-section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi-final and, therefore, the revisional jurisdiction under Section 397 could be exercised against the same.

11. Having heard the learned counsel appearing for the parties and also the principles laid down in the

judgments referred *supra*, the points that would arise for this Court are:

- (1) Whether the petition filed under Section 482 of Cr.P.C is maintainable or to invoke appellate jurisdiction under Section 29 of the DV Act?
- (2) Whether the Trial Court has committed an error issuing notice against these petitioners who are not sharing the common kitchen along with the complainant?
- (3) What order?

Point No.1

12. The order in question before this Court is issuance of notice against the petitioners herein and hence, the respondent/complainant counsel has vehemently contend that petition under Section 482 of Cr.P.C. is not maintainable. The counsel for the petitioners relying upon the judgment of this Court referred *supra* and also the Division Bench judgment of this Court contended that the petition under Section 482 of

Cr.P.C. is maintainable. The Division Bench of this Court referred *supra* while discussing with regard to the maintainability, considered the several judgments which I had already referred *supra*. In this petition also similar question was raised whether petition can be filed under Section 482 of Cr.P.C in respect of availability of alternative remedy in general under Section 397 of Cr.P.C and considered the principles laid down in **URMILA DEVI vs YUDHVIR SINGH** reported in **(2013) 15 SCC 624** and also in **MOHIT @ SONU AND ANOTHER VS STATE OF UTTAR PRADESH AND ANOTHER** reported in **(2013) 7 SCC 789**. Referring these two judgments, the Court comes to the conclusion that even though revisional remedy is available, the petition under Section 482 of Cr.P.C is maintainable so also taken note of the judgment of the Apex Court referred *supra* in **R.P.KAPUR's** case and also **SOM MITTAL's** case and another decision reported in **(2012) 9 SCC 460** between **AMIT KAPOOR vs RAMESH CHANDER AND OTHERS** and held that the petition under section 482 of Cr.P.C. is maintainable even though an

alternative remedy of revision is available. The power under section 482 of Cr.P.C. includes the powers to quash FIR, investigation or any criminal proceedings pending before any Court sub-ordinate to it. It has got very broad definition of such powers under Section 482 of Cr.P.C can be exercise to meet the ends of justice to prevent abuse of process of any Court and make necessary to give effect to any order in the Court depending upon the facts of each given case.

13. In view of the principles laid down in the Division Bench referring the judgment of the Apex Court and those judgments are subsequent to the judgment of the Apex Court in **OM KUMAR DHANKAR**'s case. But in all those cases, issuance of summons challenged for the IPC offences and here is a case, the second respondent invoked provisions of DV Act and the complaint filed by the respondent before the Trial Court is invoking the enabling provisions for seeking protection against the domestic violence and also seeking for monetary compensation.

Hence, I am of the opinion that the petition under section 482 of Cr.P.C. is maintainable and need not invoke section 29 of the DV Act or filing an appeal and Section 29 of the DV Act is very clear that an appeal shall lie to the Court of Sessions within 30 days from the date of which the order made by the Magistrate is served on the aggrieved person. Hence, Section 29 of the DV Act not takes away the right of the petitioners seeking an order under section 482 of Cr.P.C wherein the petitioners have attributed that very initiating of the DV Act against them is an abuse of process. Under such circumstances, Court can exercise the powers under section 482 of Cr.P.C. and hence the petition is maintainable.

Point No.2

14. The main contention of the petitioners before this Court is that the complaint is not maintainable against them and they are not the members of the family and they are the uncle and married sister. Having perused the complaint, it is stated that under the undue influence and

under the control of his sister more particularly petitioner No.5 who is an unmarried and the second petitioner who is a paternal uncle and petitioner Nos.3 and 5 who are also exercising the control over the respondent, all of them supported to instigate the respondent with an intention to extract additional dowry and also earning from the complainant as the complainant is in employment and her husband is un-employed. It is also the allegation that the petitioners started ill-treating the complainant by abusing her in a filthy language and demanded to bring additional dowry of Rs.5 lakh and first petitioner even snatched the debit card under the influence of other petitioners and took away all the money from her savings account. The allegation in the complaint that under the instigation of the other petitioners abused and assaulted the complainant. It is also stated in the complaint that the respondent herein has filed MC No.131/2020 wherein the first respondent i.e., the husband was served and when the matter was listed on 30.08.2020, the husband came to Kalaburagi to appear in the said case and at that time, her husband,

petitioner Nos.2, 3 and 4 came to her house and abused her in a filthy language and threatened to withdraw the above said petition. The husband and these petitioners again came to the house of the complainant on 08.09.2020 when the case was listed before the Trial Court, again abused and assaulted and have created ruckus in the house of the complainant on 08.09.2020. The first petitioner has telephonically instructed to deal sternly with this respondent and hence, the respondent-complainant has filed the complaint before the Mahila Police Station at Kalaburagi regarding ill-treatment made by the petitioners/respondents.

15. Having taken note of the averments made in the complaint a specific allegations are made against these petitioners stating that these petitioners abused as well as assaulted along with her husband and also an allegation of instigating her husband to subject her for domestic violence. It is an allegation that the husband under the

influence particularly, petitioner No.4 deserted the complainant herein.

16. Having taken note of this averment with regard to assault and abuse made to her and also instigated the husband of the respondent and it is an admitted fact that the complaint was given to the Mahila Police station on 04.09.2020 and when such complaint was given with regard to the assault and abuse implicating these petitioners in the petition filed under section 12 of the DV Act and seeking the relief of protection, assistance and separate residence against these petitioners does not arise. No doubt, the definition of 'domestic relationship' is defined under Section 2(f) which means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. But the complaint filed by the respondent does not disclose that

they are living together as a joint family and admittedly the petitioner No.1 is an uncle of her husband and other petitioners are the sister-in-law and brother-in-law and they are married sisters and other petitioner is also the sister-in-law who is unmarried but she is residing at Raichur as contended by the petitioners herein and not living along with the respondent's husband.

17. It is also pertinent to note that no doubt while filing the complaint they arrayed as respondents, the Court has to take note of meaning of "respondent" as defined under Section 2(q) of the DV Act referred *supra* and further provision says that living in a relationship in the nature of a marriage may also file a complaint against the relative of the husband or the male partner. I have pointed out that they are not living together and the question of relief sought for protection order and also for the monetary benefit does not arise. I have already pointed out that they are not enjoying any joint family property and they are not living along with the respondent

and her husband. Hence, there is a force in the contention of the petitioners' counsel that the Court has to take note of the relief prayed in the petition. If such relief cannot be granted against these petitioners, there cannot be any petition under DV Act against these petitioners. Except the allegation that at the instigation of these petitioners, the husband is causing domestic violence, no other allegations are made. In respect of the abuse and assault, already a complaint was filed before the police and when such being the facts and circumstances, I am of the opinion that these petitioners cannot be arrayed as respondents. This Court also in the judgment referred *supra* reported in **2019(3) KLJ 722** held that in the similar set of facts, when the allegations are in general nature and where an omnibus allegations are made stating that these petitioners instigated her husband to demand more dowry and other allegations are also made exercised the power under Section 482 of Cr.P.C. Hence, the factual aspects of the judgment referred *supra* is also applicable to the facts of the case on hand. Hence, I am of the opinion that the

petitioners have made out the ground to allow the petition.

Hence, Point No.2 answered as negative.

Point No.3:

18. In view of the discussions made above, I pass the following:

ORDER

The petition is allowed.

The proceedings initiated against these petitioners are hereby quashed.

**Sd/-
JUDGE**

SAN