

**Reserved**

**Case :-** MISC. SINGLE No. - 4177 of 2012

**Petitioner :-** Trilochan Singh

**Respondent :-** Manpreet Kaur & Anr.

**Counsel for Petitioner :-** Atul Kumar, Nitesh Kumar, Seema Gupta

**Counsel for Respondent :-** Govt. Advocate, Sumit K. Srivastava

**Hon'ble Dinesh Kumar Singh, J.**

1. The present writ petition has been filed challenging the order dated 21.07.2012 passed by the Court of Additional Sessions Judge, Court No.11, District Pratapgarh in Criminal Appeal No.72 of 2011 as well as order dated 18.08.2011 passed by learned Chief Judicial Magistrate, Pratapgarh in Criminal Case No.2441 of 2010 under Section 12/18 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Act').

2. Respondent No.1 is the daughter of the petitioner who had instituted a Criminal Complaint No.2441 of 2010 under Section 12/18 of the Act in the Court of Chief Judicial Magistrate, Pratapgarh against her father. From the facts as narrated, the petitioner with his wife has four daughters and two sons and their details are given as under:-

S.N.	Name	Age	Status	Qualification
1	Daljeet Kaur	40	Married	Doctor
2	Bhawan Jeet Kaur	35	Married	M.A. in two subjects prior to marriage
3	Gurjeet Singh	33	Unmarried	Graduate
4	Jasmeet Kaur	33	Unmarried	Post Graduate M.A.
5	Manpreet Kaur	29	Unmarried	M.A. while residing with the petitioner
6	Charanjeet Singh	26	Unmarried	Graduate plus M.C.A.

3. The two daughters after their education and marriage are living separately. Respondent No.1 is the youngest daughter of the petitioner. She had completed post graduation in the year 2003 from M.D.P.G. College, Pratapgarh while living with the petitioner. It is alleged that respondent

No.1 wanted to do private service to which the family members objected and wanted her to get married and settle in her life. However, respondent No.1 was adamant to live life on her own terms and, therefore, she left the parental house willingly in the year 2005 and started living with the eldest daughter of the petitioner and also doing private service in H.N. Homeohall. It is further alleged that all efforts to bring her back and get her married failed and she did not listen to the advice of her parents or her family members. Five years from the date since she left the parents' residence, she filed an application in the year 2010 under Section 12/18 of the Act, alleging domestic violence in the nature that the petitioner was not discharging his parental duty by not meeting out her expenses and not arranging her marriage.

4. Respondent No.1 claimed monthly maintenance to the tune of Rs.15,000/- per month and Rs.10,00,000/- for marriage and share in the residential house of the petitioner.

5. On notice, the petitioner filed objection to the aforesaid application on 26.07.2010 questioning the maintainability of the application besides denying the allegations levelled by respondent No.1. It was also disclosed that in respect of the shop, a civil dispute was pending between the shareholders in the Court of Additional Judge (Junior Division), Court No.1, Pratapgarh, while the house situated in Mohalla Sahoderpur was mortgaged with the State Bank of India. It was further said that respondent No.1 had willingly left the house of the petitioner and in fact she had brought disrepute to the entire family despite the fact that the entire family had taken due care, and given love and affection to her.

6. Chief Judicial Magistrate, Pratapgarh vide order dated 18.08.2011 placing reliance on the report of the District Probation Officer had directed the petitioner to deposit Rs.4,000/- in the Bank account of respondent No.1 every month towards maintenance and make fix deposit of Rs.4,00,000/- in the name of respondent No.1 within a period of three months. It was further directed that the petitioner should not make any interference in the matter of respondent No.1 and to provide her accommodation of one room with wash room, kitchen. The petitioner had been restrained to enter the room of respondent No.1 without her permission.

7. Learned Magistrate considering the definition of aggrieved person under Section 2(a) of the Act rejected the objection regarding the maintainability of the complaint by respondent No.1 and according to the learned Magistrate any woman, she may be daughter, wife or daughter-in-law can be aggrieved person and, thus, she is entitled to file a complaint.

8. Against the aforesaid order dated 18.08.2011, the petitioner filed Criminal Appeal No.72 of 2011 before the Sessions Court. Learned Additional Sessions Judge, Court No.11 vide judgment and order dated 21.07.2012 decided the four issues framed by him as under:-

(a) Whether the respondent/applicant was entitled to file application under Section 12/18 of the Act ?

(b) Whether the lower court has fixed the amount of compensation considering the financial position of the petitioner ?

(c) Whether the lower court has passed the order against the facts and law ?; and,

(d) Conclusion.

9. Learned Appellate Court has held that the respondent was entitled to maintain the complaint and the petitioner had financial position to make payment of the amount fixed by the lower court. The order passed by the lower court did not suffer from any illegality on facts or law and in view thereof the appeal was dismissed.

10. This Court on 07.05.2019 passed the following order:-

"1. Admittedly, against the impugned order passed in appeal, the revision is maintainable and not the writ petition. However, the Court is not powerless to treat the writ petition as revision petition and decide the case accordingly.

2. Learned counsel for the petitioner has submitted that under Section 31 of the Domestic Violence Act, the punishment provided is up to one year. Section 468 Cr.P.C. provides limitation of one year for filing a complaint for offence which entails sentence up to one year. From the facts as stated in the order passed by learned Magistrate under Section 12 of the Domestic Violence Act, it is evident that alleged incident happened in the year 2005 whereas the complaint was filed in the year 2010. Learned counsel for the petitioner submits that the complaint was time barred and learned Magistrate had failed to take into account the limitation as provided under Section 468 Cr.P.C.

3. Learned counsel appearing for the petitioner has placed reliance on the judgment of Karnataka High Court in the case of Gugudev and others versus Jayashree in Criminal Petition No.11476 of 2013 and Bombay High Court in the case of Sejal Dharmesh Ved versus State of Maharashtra and Ors. in Criminal Application No.160 of 2011 to buttress his submission.

4. He further submits that Section 28 of the Domestic Violence Act specifically provides that provision of Cr.P.C. would be applicable.

5. Mr. Sumit Kumar Srivastava, learned counsel for respondent No.1 submits that he may be allowed some time to prepare the case on this point.

6. List this petition after a week peremptorily."

**11.** Thus, the only question which needs to be decided is whether the complaint filed by respondent No.1 was time barred or not inasmuch as it was filed after five years from the date respondent No.1 left the parent's house.

**12.** Vienna Accord of 1994 and Beijing Declaration and the Platform for Action (1995) have acknowledged that the domestic violence is undoubtedly a human rights issue. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women in its General Recommendations has recommended that State parties should act to protect women against violence of any kind, especially that occurring within the family. To fulfil international commitment and obligation and to implement the international convention in this regard and to provide a remedy in the civil law for the protection of women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society, the Protection of Women from Domestic Violence Act, 2005 has been enacted.

**13.** The bill was introduced to enact a law keeping in view the rights guaranteed under Articles 14, 15, 21 of the Constitution of India to provide for a remedy under the civil law with aim to protect the women from being victim of domestic violence.

**14.** The scheme of 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 through a relationship in the nature of marriage or adoption. Relationships with family members living together as joint family are also included. Even those women who are sisters, widows, mother single women and living with abuser are entitled to legal protection under the Act. The Act enables the wife or the family living in a relationship in the nature of marriage to file a complaint against any relative of husband or male partner but it does

not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

**15.** Domestic violence has been defined in Section 3 of the Act which includes actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or any relatives would also be covered under the definition.

**16.** Sections 18 to 26 of the Act provide the nature of reliefs which can be granted under the Act to a victim of domestic violence which include housing to the women. It also provides for a right to a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. Section 18 provides that protection orders can be passed in favour of the aggrieved person to prevent abuser from aiding or committing an act of domestic violence or any other specified act, entering the workplace or any place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

**17.** The Act also provides for appointment of Protection Officers and registration of non-governmental organizations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.

**18.** Section 31 of the Act provides that the breach of protection order or an interim order shall be an offence under the Act which may be punishable with imprisonment for a term which may be extended to one year or with fine which may extend to Rs.20,000/- or both. Despite punishment being limited up to one year under Section 32 of the Act, it has been provided that the offence under Sub-section (1) of Section 31 shall be cognizable and non punishable.

**19.** In exercise of the powers conferred under Section 37 of the Act, Protection of Women from Domestic Violence Rules, 2006 have been framed.

**20.** Supreme Court in the case of **Inderjit Singh Grewal versus State of Punjab and another : (2011) 12 SCC 588** seems to have agreed with the

submission that in view of the provisions of Section 468 Cr.P.C., the complaint can be filed only within a period of one year under the provisions of the Act from the date of incident. Paragraphs 32 and 33 of the aforesaid report read as under:-

"32. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 CrPC, that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Sections 28 and 32 of the 2005 Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006 which make the provisions of CrPC applicable and stand fortified by the judgments of this Court in *Japani Sahoo v. Chandra Sekhar Mohanty* [(2007) 7 SCC 394 : (2007) 3 SCC (Cri) 388 : AIR 2007 SC 2762] and *NOIDA Entrepreneurs Assn. v. NOIDA* [(2011) 6 SCC 508 : (2011) 2 SCC (Cri) 1015] .

33. In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions of the 2005 Act is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the court. Undoubtedly, for quashing a complaint, the court has to take its contents on its face value and in case the same discloses an offence, the court generally does not interfere with the same. However, in the backdrop of the factual matrix of this case, permitting the court to proceed with the complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same."

21. The Supreme Court in the case of **Krishna Bhattacharjee versus Sarathi Choudhury and another : (2016) 2 SCC 705** seems to have approved the view expressed in the *Inderjit Singh Grewal's* case (supra) regarding applicability of Section 468 Cr.P.C. for filing a complaint under Section 12 of the Act. Paragraphs 32 and 33 of aforesaid report read as under:

"32. Regard being had to the aforesaid statement of law, we have to see whether retention of stridhan by the husband or any other family members is a continuing offence or not. There can be no dispute that wife can file a suit for realisation of the stridhan but it does not debar her to lodge a criminal complaint for criminal breach of trust. We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of "aggrieved person" clearly postulates about the status of any woman who has been subjected to domestic violence as defined under Section 3 of the said Act. "Economic abuse" as it has been defined in Section 3(iv) of the said Act has a large canvass. Section 12, relevant portion of which has been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. It has been held in *Inderjit Singh Grewal* [*Inderjit Singh Grewal v. State of Punjab*, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614] that Section 468 of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under Sections 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the same as we are of the considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under Section 12 of the 2005 Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. The concept of "continuing offence" gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family

members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act.

33. In the present case, the wife had submitted the application on 22-5-2010 and the said authority had forwarded the same on 1-6-2010. In the application, the wife had mentioned that the husband had stopped payment of monthly maintenance from January 2010 and, therefore, she had been compelled to file the application for stridhan. Regard being had to the said concept of "continuing offence" and the demands made, we are disposed to think that the application was not barred by limitation and the courts below as well as the High Court had fallen into a grave error by dismissing the application being barred by limitation."

22. However, from the judgments of this Court and other High Courts which seem to suggest that the limitation of one year as provided under Section 468 Cr.P.C. would be applicable for filing an application under Section 31 of the Act in case of breach of the protection order and not for filing the complaint under Section 12 of the Act.

23. The question which needs to be decided is that what should be the period of limitation for filling a complaint under Sections 12 and 18 of the Act.

24. Some High Courts including this High Court have taken the view that provisions of Section 468 Cr.P.C. are applicable in the case where order passed under Section 12/18 of the Act is violated and on such violation an application under Section 31 of the Act can be filed only within one year as provided under Section 468 of the Cr.P.C. A Single Judge of this Court in the case of **Akhilish Kumar Singh and another versus State of U.P. and another** in **Criminal Revision No.885 of 2015** has held as under:-

"At this juncture I would further like to emphasise that the scope and limit of the revisional court is very restricted. There is concurrent finding of the trial court as well as of the appellate court. Both the courts below had rejected the preliminary objection raised by the revisionist by a well reasoned and discussed order. There seems to be no patent illegality or prima facie infirmity in the order. It is observed that divorce petition is still pending, interim alimony had been granted under Section 24 of the 1955 Act and as per the legal proposition there is no bar for petition under Section 12 of the Act, 2005 for the return of stridhan. Petition under Section 27 of the Act, 1955 is also pending and the legal proposition is that there could not be a bar for a petition under Section 12 of the Act, 2005 as retention of stridhan is a continuing offence when a wife had shared a household in the past. Although the Act, 2005 is prospective, but at the same time, law laid down by the Apex Court is that even she could be entitled to be protection under the Domestic Violence Act and so far as applicability of Section 468 Cr.P.C is concerned, the provision of Section 468 as held by the Hon'ble Supreme Court comes only when any breach of the order has been committed by the respondent passed under the proceeding of Section 12 of the Domestic Violence Act and the specific provision for the offence committed under the Domestic Violence Act is an offence under Section 31 of the Act which is penalty for breach of protection order by respondent. On the basis of aforesaid legal proposition, I am of the view

that the orders of the trial court as well as appellate court do not suffer from any illegality or perversity which require any interference from this court. So far as the law cited by the revisionist is concerned, in view of the aforesaid legal proposition as cited above and the fact and circumstances being the different to the present case, it is of no help to the revisionist."

25. Another decision by this Court is in the case of **Santosh Kumar Yadav and five others vs. State of U.P. and another : 2015 (5) ALJ 466** has held that an application under Section 12 of the Act is not a complaint of an offence for filing of which there would be a limitation by virtue of the provisions of Section 468 Cr.P.C. read with Section 28 of the Act. In para 8 it has held as under:-

"8. It would be worthwhile to observe that Section 468 of the Code of Criminal Procedure provides that except as otherwise provided elsewhere in the Code, no Court shall take cognizance of an offence after the expiry of the period of limitation. Clause (b) of sub section (2) of section 468 of the Code provides that the period of limitation shall be one year, if the offence is punishable with imprisonment for a term not exceeding one year. Section 31 of the D.V. Act provides that a breach of protection order or of an interim protection order by the respondents shall be an offence under the Act punishable with imprisonment of either description for a term which may extend to one year or with fine which may extend to Rs. 25,000/- or with both. Since an offence punishable under section 31 of the D.V. Act, 2005 is punishable with a maximum sentence of one year, the limitation to file a complaint seeking prosecution for an offence punishable under section 31 of the D.V. Act would be one year."

26. Gujarat High Court in its judgment in the case of **Yogesh Anantrai Bhatt & others versus State of Gujarat & other 2016 SCC OnLine Guj 2398** has held that the provisions of limitation as provided under Section 468 Cr.P.C. would not be applicable in case of an application under Section 12 of the Act. Para 13 of the aforesaid judgment reads as under:-

"13. Therefore, any other decision, even if it is dealing with the issue of limitation with reference to DV act it is to be clarified that it may be applicable only in case of proceedings under section 31 of the DV Act since sub-section [1] of section 31 contemplates punishment in the event of breach of the order under such Act. Therefore, provisions of section 31 of the DV Act do not come into play till an order in an application under section 12 is passed and till the same is breached. Therefore, when the respondent is simply seeking various reliefs contemplated by the DV Act, unless those reliefs are granted and only if such order is violated, the respondent may not have to invoke provisions of section 31 of the DV Act and at that stage only question of limitation would arise and thereby respondent may not be entitled to invoke provisions of section 31 of the DV Act seeking punishment by way of sentencing the otherside for breach of any such order after a period of one year from the date of violation of any such order. Practically the provisions of section 31 [1] of the DV Act is similar to the provisions of section 125 [3] of the Code and, [therefore, like an application for maintenance under section 125 of the Code, it cannot be barred by limitation and an application under section 12 of the DV Act is not subject to limitation as contemplated by the petitioners."



27. Karnataka High Court in the case of **J.Srinivas versus G. Dhanalakshmi** in **Criminal Petition No.2419 of 2009** has taken a different view that since, the maximum punishment which is attracted for violation of an order passed under Section 12 r/w 18 of the Act is one year, the complaint should be filed within a period of one year in terms of Section 468 Cr.P.C. and since in that case the complaint was registered in the year 2009 and the offence alleged to have been committed in the year 2004, it was held that the complaint was hopelessly barred by time.

28. The orders passed on a complaint under Section 12 of the Act are of civil nature. The Act has been enacted to provide a remedy in civil law for the protection of women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. There is no limitation provided for filing a complaint under Section 12 of the Act. Then, what should be limitation period for filing a complaint under Section 12 of the Act? Two judgments of this Court seem to suggest that there is no limitation for filing complaint under Section 12 of the Act. Similar view has been taken by the Gurajat High Court as mentioned above. If the Act is meant to provide civil remedy then in absence of specific period of limitation having not been provided, can it be said that the complaint should be filed within a period of three years from the date of cause of action or the complaint can be filed at any time.

29. I am unable to accept the view taken by the two of my learned brothers in the aforesaid two judgments of this Court that in absence of specific limitation being provided for filing complaint under Section 12 of the Act, a complaint can be filed at any point in time.

30. In view of the aforesaid, I refer the following questions to be decided by a larger Bench of this Court.

(i) Whether the provisions of Section 468 of the Cr.P.C. are applicable for filing complaint under Section 12 of the Act as seems to have been held by Supreme Court in the aforesaid-mentioned two cases?

(ii) Whether a complaint filed under Section 12 of the Act having civil consequence and, therefore, in absence of specific period of limitation being provided, the complaint should be filed within a period of three years

from the date of cause of action or whether it can be filed at any point in time?

**31.** Let the case be placed before the Hon'ble Chief Justice/Senior Judge for constituting a larger Bench for deciding the aforesaid issues which arise in the present case.

**Order Date:-02.08.2019**

prateek