

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT JAMMU**

CM(M) No.11/2024

1 Sardul Singh son of Joga Singh

**2 Kirpal Kour wife of Sardul Singh both residents of village
Biaspur Parlah, Post Office Arnia Suchetgarh District Jammu UT
of Jammu and Kashmir
...petitioners**

Through: -Mr.Amandeep Singh Advocate

Vs.

**Davinder Kour wife of Gurinder Singh resident of village Jadh
Post Office Barwal Brahmana Tehsil Akhnoor Jammu.**

...respondents

Through: - Ms Himani Uppal Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT(ORAL)

1 The petitioners have challenged order dated 23.11. 2023 passed by the learned Principal Sessions Judge, Jammu ('the Appellate Court' for short) whereby the appeal of the petitioners against order dated 10.07.2023 passed by the learned Special Mobile Magistrate (Electricity Magistrate), Jammu ('the trial Magistrate' for short) in a petition filed by the respondent against the petitioners under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('DV Act' for short) has been dismissed.

2 It appears that a petition under Section 12 of DV Act was filed by the respondent against the petitioners and others including her husband Gurinder Singh before the learned trial Magistrate. It also appears that the marriage between the respondent and her husband, who

happens to be the son of the petitioners herein, had taken place on 29.01.2015, whereafter, the relation between the respondent and her husband and in-laws including the petitioners herein did not remain cordial. In the petition under section 12 of the DV Act, the respondent leveled several allegations of domestic violence against the petitioners and her husband. It was alleged by the respondent that the petitioners and other family members of her husband including her husband abused and taunted her for bringing less dowry and she was even beaten up by them. She has given instances with regard to the incidents of alleged acts of domestic violence perpetrated upon her by the petitioners and her husband. It has been alleged by her in the aforesaid petition that the petitioners and other family members of her husband were forcing her to bring dowry in the shape of different articles

3 It seems that on an earlier occasion, the respondent had filed a similar petition against the petitioners herein and her husband and the same was withdrawn by her in terms of order dated 07.12.2021 passed by the learned trial Magistrate. After withdrawal of the earlier petition under Section 12 of the DV Act, the respondent filed another petition under the same provision against the petitioners as well as her husband and her sister-in-law. During pendency of the said proceedings, the petitioners herein as also the sister-in-law of the respondent, namely Smt. Rani Kour filed an application for dropping of the proceedings against them. The trial Magistrate, after inviting objections from the respondent and after hearing the parties, partly allowed the said application in terms of order dated 10.07.2023 thereby

accepting the application for dropping of proceedings to the extent of Smt. Rani Kour, sister-in-law of the respondent, but declining the said application to the extent of petitioners herein.

4 The aforesaid order came to be challenged by the petitioners by way of an appeal under Section 29 of the DV Act before the appellate Court, which, vide impugned order dated 23.11.2023, has dismissed the appeal.

5 The petitioners, who happen to be the parents-in-law of the respondent, have challenged the impugned order passed by the Appellate Court as also order dated 10.07.2023 passed by the trial Magistrate rejecting the application of the petitioners for dropping of proceedings on the ground that once the earlier petition was dismissed as withdrawn by the respondent, her second petition under Section 12 of DV Act on the same ground is not maintainable. It has been contended that the respondent has not come to the Court with clean hands, inasmuch as, she has suppressed the fact regarding filing and withdrawal of earlier petition. It has been further contended that because the respondent had admittedly not resided with petitioners since the year 2016, as such, there was no domestic relationship between her and the petitioners. Accordingly, the impugned petition filed by the respondent against the petitioners is not maintainable.

6 I have heard learned counsel for the parties and perused record of the case.

7 As per the provisions contained in Section 12 of the DV Act, an aggrieved person has right to present a petition before the Magistrate seeking certain reliefs which includes relief for issuance of an order for payment of compensation or damages caused by the acts of domestic violence committed by the respondent. Thus, for maintaining an application under Section 12 of the DV Act, an aggrieved person has to show that the respondent has committed acts of domestic violence against her. Section 3 of the DV Act defines domestic violence and the same reads as under:

“3. Definition of domestic violence:

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person”.

8 From a perusal of the aforesaid provision, it is clear that the respondent can be stated to have committed domestic violence in case he/she harms, injures, or endangers the health, safety, life, limb or

well being, whether mental or physical, of the aggrieved person which would include sexual abuse, emotional abuse and economic abuse. Harming or injuring an aggrieved person with a view to coercing such a person to meet any unlawful demand for dowry or other property, would also come within the definition of domestic violence. Thus, once specific allegations regarding the aforesaid commissions/omissions on the part of the respondent are made by an aggrieved person in a petition under Section 12 of the DV Act, the Magistrate has to proceed against the respondent in terms of the provisions contained in the said Act.

9 Coming to the present case, the impugned petition under Section 12 of the DV Act specifically refers to the allegations of domestic violence allegedly perpetrated by the petitioners against the respondent/aggrieved person. The allegations, so far as they relate to the petitioners, are specific and serious. The trial Magistrate, as also the Appellate Court, have recorded concurrent opinions that the allegations leveled by the respondent against the petitioners are specific in nature and that the same constitute incidents of domestic violence against the respondent. Therefore, it would not be open to this Court, in the exercise of its supervisory jurisdiction, to take a different view of the matter.

10 That takes us to the contention of the petitioners regarding the effect of withdrawal of the earlier petition by the respondent and the alleged suppression of said fact in her subsequent petition. In this regard, when we have a look at the contents of the impugned petition

from its paras (t) to (w), it is evident that this aspect of the matter has been dealt with. It has been averred by the respondent in her impugned petition that the petitioners, as well as her husband, with the intervention of Smt. Rani Kour, sister-in-law of the respondent, who was impleaded as respondent No.6 to the impugned petition, assured the respondent that they will take her back to the matrimonial home and they also called her husband back to home, provided the respondent withdraws her case against them. It has been pleaded that, on the basis of this assurance, the respondent withdrew her earlier petition. This assertion of respondent finds support from the statement made by her before the learned Magistrate at the time of withdrawing her earlier petition. In the said statement, it has been clearly stated by the respondent that the respondents in the earlier petition had assured that she would be taken back to the matrimonial home and, as such, she is withdrawing her petition. The respondent has gone to aver in the impugned petition that after withdrawal of the petition, the petitioners herein and their other family members changed their colour and they refused to allow her to reside in the matrimonial home and, in fact, they made a demand of Rs.30.00 lacs. When the respondent failed to meet their demand, they abused her and forcibly threw her out of the matrimonial home.

11 Form the above, it is clear that the respondent has not concealed the fact of filing of earlier petition and its subsequent withdrawal. She has also explained as to in what circumstances she has again approached the Court. Once the petitioners and their other family

members failed to take the respondent back into the matrimonial fold, and keep the promise which they had extended at the time of withdrawal of earlier petition by the respondent, she was left with no option, but to approach the Court once again. Under the circumstances, it was open to the respondent to file the second petition despite withdrawal of the earlier petition. The provisions of the Code of Civil Procedure pertaining to *res judicata*, or even principles in the nature of *res judicata*, can not be made applicable to the proceedings under the DV Act, particularly in a case where the aggrieved person has explained the circumstances under which she has filed the second petition after withdrawal of the earlier petition. The argument of the learned counsel appearing for the petitioners, in this regard, is without any merit.

12 The next ground that has been urged by learned for the petitioners is that there was no domestic relationship between the parties as the respondent, as per her own case, had left the matrimonial home in the year 2016, whereafter, she had withdrawn her earlier petition under Section 12 of the DV Act. In this regard, it is to be noted that as per Section 2(f) of DV Act, a 'domestic relationship' 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. The definition makes it clear that 'domestic relationship' would include even a relationship between two persons who may have lived

together in a shared household at any point of time. Therefore, even if the respondent has left the shared household in the year 2016, but the fact of the matter remains that prior to that, she has admittedly lived in a shared household with the petitioners. Thus, there was a domestic relationship between the parties. The argument of the learned counsel for the petitioners in this regard, is without any substance.

13 For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed. Interim direction, if any, shall stand vacated.

(Sanjay Dhar)
Judge

Jammu
08.11.2024
"Sanjeev, "

Whether the order is speaking: Yes
Whether the order is reportable: Yes

