

Court was required to be read by the competent authority which passed the order and only after due application of mind, a view was to be taken as to whether the petitioner was worthy of retention in service or to be inflicted with the major penalty of dismissal. The impugned orders dated 15.5.2009 passed by the Civil Surgeon at Annexure P4 and order dated 6.6.2012, Annexure P6, passed by the Appellate Authority do not reflect any such application of mind. Impugned orders, as such, cannot sustain.

(12) The instructions dated 5.8.1998 issued by the Department of Personnel and Administrative Reforms, Government of India appended as R1 and placed reliance upon by the learned State counsel, in fact, support the petitioner. Such instructions also enjoin upon the competent authority to take into account the conduct of a Government servant which has led to his conviction on a criminal charge.

(13) For the reasons recorded above, the writ petition is allowed. Impugned orders dated 15.5.2009, Annexure P4, and dated 6.6.2012, Annexure P6, are quashed. The petitioner is reinstated in service with all consequential benefits. Keeping in view the fact that the petitioner was initially appointed in the year 1981 and would now be close to attaining the age of superannuation, the liberty of passing a fresh order in the light of his conviction is being denied.

14. Writ petition allowed in the aforesaid terms.

J.S. Mehndiratta

Before Jitendra Chauhan, J.

GEETA KAPOOR AND ANOTHER—*Petitioner*

versus

STATE OF HARYANA AND ANOTHER—*Respondents*

CRM-M-37116 of 2012

October 10, 2013

Protection of Women from Domestic Violence Act, 2005 - S.12 - Code of Criminal Procedure, 1973 - Ss. 173, 319, 482 - Indian Penal Code, 1860 - S.406, 498A - 'Limitation' - 'Double Jeopardy' - Complaint filed against petitioners u/s 12 of Act of 2005 - FIR also

registered against them u/s 498A, 406 IPC - Found incorrect by police - Application u/s 319 Cr.P.C. dismissed by Magistrate - Revision also dismissed - Petitioner filed quashing of complaint filed under Domestic Violence Act on grounds of bar of limitation and double jeopardy - Held, complaint under Domestic Violence Act can be filed at any time - Physical and mental harassment is a continuing offence - Proceedings u/s 498-A IPC are criminal in nature - Object of Domestic Violence Act is to provide protection to a helpless woman - Proceedings are of different nature - Can be filed separately.

Held, that the correct view is that in case of decree of divorce, the limitation to file proceedings is only a year. But in this case still the relationship of husband and wife is alive. The object of the D.V.Act, is to provide effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family. So, it is held that in case of subsisting relationship of husband and wife, there is no limitation. Meaning thereby that the complaint under the D.V.Act, can be filed at any time as the physical and mental harassment within the family is a continuing offence.

(Para 6)

Further held, that the Domestic Violence Act is a social welfare legislation and the proceedings has to be construed as civil in nature. As far as reliefs are concerned, only if reliefs ordered are not obeyed, provision comes into make proceedings as criminal. But the proceedings under Section 498-A IPC are of criminal in nature because it is an offence under the Indian Penal Code, on which procedure under the Code of Criminal Procedure and the Indian Evidence Act is applicable. Under Section 498-A IPC only punishment provided under the Code is awarded to the offender. In a complaint under the D.V.Act, the rights of a woman granted under various statutes are protected and implemented. A woman need not file different cases for various reliefs such as custody of children, maintenance, right of residence etc.etc. but she can claim different reliefs by filing proceedings under the D.V.Act. So, both the cases are of different nature and have no bearing upon each other. However, a Magistrate in proceedings under the D.V.Act, can also add Section 498-A IPC in order to inflict punishment

upon the offender. The proceedings under the D.V.Act, are of summoning nature and immediate relief is to be granted to a victim. The main object of the D.V.Act, is to provide protection to a helpless woman so that she is not ousted from the husband's house or she is compelled to leave her in-laws house by the Acts of her in-laws' family members. Besides, allowing shelter in her inlaws house, she is also granted financial support from the coffer of her husband, but it is not provided under Section 498-A of the Code.

(Para 8)

Further held, that so, keeping in view the intention of our law framers, it is held that both proceedings are of different nature and can be filed separately. In this case the proceedings under the D.V Act, can continue on the same set of facts of a case under Section 406, 498-A IPC.

(Para 9)

Pt. Hari Om Sharma, Advocate, *for the petitioners.*

R.N.Bhardwaj, AAG Haryana.

Namit Khurana, Advocate, for respondent No.2.

JITENDRA CHAUHAN, J.

(1) The present petition is filed by petitioner-Smt. Geeta Kapoor (mother-in-law) and Ms. Renu Bhatia (sister-in-law) for quashing of Criminal Complaint No.120 dated 27.07.2009, titled as Anju Kapoor Vs. Sanjeev Kapoor and others, under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (herein referred to as 'the D.V.Act') pending in the Court of Judicial Magistrate Ist Class, Jagadhari.

(2) Learned counsel for the petitioner argued that complainant Anju Kapoor-respondent No.2 has earlier lodged an FIR No.89 dated 22.03.2007 under Section 498-A, 406 IPC at Police Station Farakpur against Sanjiv Kumar (husband), Kuldip Rai (father-in-law), Geeta Kapoor (mother-in-law) and Renu Bhatia (sister-in-law). After investigation petitioner No.2-Smt. Renu Bhatia was found innocent and was kept in column No.2 in report under Section 173 Cr.P.C. Thereafter an application under Section 319 Cr.P.C. was moved by the complainant for summoning petitioner No.2 as an additional accused. That application was dismissed vide order dated 13.08.2010 by the Judicial Magistrate Ist Class, Jagadhari. Complainant

Smt. Anju Kapoor (respondent No.2 herein) challenged the order dated 13.08.2010 in criminal revision before the Sessions Judge, Yamuna Nagar which was also dismissed on 21.04.2011. The learned counsel argued that on the same set of facts, complaint under the Protection of Women from Domestic and Violence Act, 2005, does not lie. He further argued that Section 468 of the Code of Criminal Procedure prescribes only one year limitation for filing criminal complaint under the D.V.Act, 2005 from the date of the cruelty with a woman. He cites para 24 of Apex Court Judgment in *Inderjit Singh Grewal* versus *State of Punjab (1)*. The learned counsel pointed out that the alleged act of cruelty as per complaint is dated 19.01.2007, whereas the impugned complaint was filed on 27.07.2009 and submitted that the complaint is beyond one year and not maintainable against petitioner No.2. Learned counsel further argued that the petitioner No.1- Smt.Geeta Kapoor (mother in-law) is being prosecuted on the same set of facts under Section 406, 498-A IPC. It is double jeopardy. He further argued that petitioner No.1 Smt.Geeta Kapoor is more than 70 years of age, suffer from old age ailment and has been residing separately from the respondent No.2 and his son. The counsel argued that complaint under the D.V.Act, against both the petitioners is abuse of process of law and may be quashed.

(3) On the other hand, the learned counsel for respondent No.2 opposed the prayer on the ground that the petitioners have not challenged the summoning order and this petition is not maintainable.

(4) This Court has considered the rival contentions of learned counsel for the parties.

(5) In this case, two important points arise for determination:-

(i) Whether limitation in filing the complaint under the DV Act, 2005 is one year?

(ii) Whether complaint under D.V.Act, is maintainable where a case under Section 498-A of the Indian Penal Code is already pending?

(1) 2011 (4) RCR (Crl.) 1

Point No.(i)

(6) The case law Inderjit Singh Grewal's case (supra) is not applicable to the case in hand. In the cited case there was a decree of divorce between the parties. The relationship came to an end between the parties in the cited case law. The correct view is that in case of decree of divorce, the limitation to file proceedings is only a year. But in this case still the relationship of husband and wife is alive. The object of the D.V.Act, is to provide effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family. So, it is held that in case of subsisting relationship of husband and wife, there is no limitation. Meaning thereby that the complaint under the D.V.Act, can be filed at any time as the physical and mental harassment within the family is a continuing offence.

Point No.(ii)

(7) The next point to be decided is as to whether on the same set of facts, two separate proceedings one under Section 198-A IPC and the other under the D.V.Act, 2005 are maintainable or not.

(8) The Domestic Violence Act is a social welfare legislation and the proceedings has to be construed as civil in nature. As far as reliefs are concerned, only if reliefs ordered are not obeyed, provision comes into make proceedings as criminal. But the proceedings under Section 498-A IPC are of criminal in nature because it is an offence under the Indian Penal Code, on which procedure under the Code of Criminal Procedure and the Indian Evidence Act is applicable. Under Section 498-A IPC only punishment provided under the Code is awarded to the offender. In a complaint under the D.V.Act, the rights of a woman granted under various statutes are protected and implemented. A woman need not file different cases for various reliefs such as custody of children, maintenance, right of residence etc.etc. but she can claim different reliefs by filing proceedings under the D.V.Act. So, both the cases are of different nature and have no bearing upon each other. However, a Magistrate in proceedings under the D.V.Act, can also add Section 498-A IPC in order to inflict punishment upon the offender. The proceedings under the D.V.Act, are of summoning nature and immediate relief is to be granted to a victim. The main object of the D.V.Act, is to provide protection to a helpless woman so that she

is not ousted from the husband's house or she is compelled to leave her in-laws house by the Acts of her in-laws' family members. Besides, allowing shelter in her inlaws house, she is also granted financial support from the coffer of her husband, but it is not provided under Section 498-A of the Code.

(9) So, keeping in view the intention of our law framers, it is held that both proceedings are of different nature and can be filed separately. In this case the proceedings under the D.V Act, can continue on the same set of facts of a case under Section 406, 498-A IPC.

(10) Accordingly, it is not a fit case to exercise the extra ordinary powers under Section 482 of the Code. Keeping in view, the above discussion, this petition fails and is dismissed.

J.S. Mehndiratta

Before Rajesh Bindal, J.

SHIV RAJ AND OTHERS—Petitioners

versus

KURUKSHETRA UNIVERSITY—Respondent

CWP No. 7363 of 2012

April 3, 2013

Constitution of India, 1950 - Art. 226 - Regularization - Services of petitioners were terminated - Labour Court ordered reinstatement - Writ of university dismissed - Persons appointed after petitioners were regularized as per policy dated 1.10.2003 - Policy withdrawn later on - Claim of petitioners not considered - Civil Writ Petition filed by petitioners seeking regularization - University contended in reply that policy was withdrawn and was not in existence - CWP allowed - Held, as petitioners were reinstated with continuity of service they shall be deemed to be in service on cut-off date - Withdrawal of policy subsequently will be of no consequence.

Held, that in terms of the notification dated 1.10.2003 issued by the Government of Haryana, which was adopted by the University, daily wage employees, who had completed three years of service on 30.9.2003