

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR
(Through Video Conference)

Reserved on 25.11.2020
Pronounced on 04.12.2020

CRMC No. 105/2018 (O&M)

Syed Zubair Shah and others ...Petitioner/Applicant(s)

Through :- Mr. Salih Peerzada, Advocate
V/s

Farhat Rashid SheikhRespondent (s)

Through :- Mr. Z. A. Qureshi, Sr. Advocate with
Ms. Rehana, Advocate

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
(through Video Conference from residence in Jammu)

JUDGMENT

1. The present petition has been filed by the petitioners for quashing of the complaint filed under section 12, 17, 19 and 20 of the Jammu and Kashmir Protection of Women from Domestic Violence Act, 2010 (for short the Domestic Violence Act) pending before the court of Special Mobile Magistrate, Baramulla (hereinafter to be referred to as the trial court) on the ground that a false complaint has been filed by the respondent in order to compel an unconscionable resolution. It is further submitted that an amicable settlement was arrived at on 17.12.2017 pursuant to which it was decided that the marriage between petitioner No. 1 and the respondent would be dissolved and it was further resolved that she would be paid an amount of Rs. 1.75 lacs as compensation besides retaining the property on account of Than and Mehar. It is further stated that in order to frustrate the said agreement, the respondent filed a complaint and simultaneously the application under section 488 Cr.P.C. before the Munsiff, Judicial Magistrate, Baramulla. It is

further submitted that the respondent did not share any accommodation nor is entitled to restoration of property or compensation in view of the conduct of the parties and resolution of dispute by a socially recognized body. It is further stated that the respondent is precluded from filing the complaint after a delay of more than one year from the occurrence of forced removal and assault as alleged and the complaint is only afterthought to subvert the resolution of dispute which is binding upon the parties. It is further stated that the allegations regarding demand of dowry are concocted. It is further submitted that the complaint is not in the prescribed form and there is no report from the concerned Inspectors to support the claim.

2. Mr. Salih Peerzada, learned counsel for the petitioners has vehemently argued that the complaint has been filed by the respondent with oblique motive just to harass the petitioners and to force the petitioners for unconscionable settlement. He has further stated that there is no domestic relationship between the petitioner Nos. 2 to 4 and the respondent.

3. *Per contra*, Mr. Z. A. Quershi, learned Senior Advocate appearing for the respondent has vehemently argued that the petitioners have raised the disputed question of facts, those cannot be adjudicated upon in a petition under section 561-A (now 482 Cr.P.C). The petitioners have a remedy to plead all those facts before the trial court.

4. Prior to appreciation of rival contentions, it is necessary to have brief resume of the averments made by the respondent in her application under section 12 of Domestic Violence Act. The respondent has leveled various allegations with regard to the demands made by the petitioners in her application filed under section 12 of the Domestic Violence Act. She has further stated that she was turned out of her matrimonial home on 10.12.2016 and ever since then she has been residing

with her parents at Baramulla and despite her request, golden ornaments and articles have not been returned to her by her in-laws.

5. From the contentions raised by the petitioners, it is evident that the petitioners have raised disputed question of facts, such as, that there was no domestic relationship between petitioner Nos. 2 to 4 and the respondent and also that no demands were made by them. These are all the disputed questions of facts those cannot be adjudicated upon by this Court in a petition under section 561-A Cr.P.C particularly when the objections are still to be filed before the trial court and these questions can be determined only during the trial.

6. Mr. Salih Peerzada, learned counsel for the petitioners has vehemently argued that the application has been filed after one year and placed much reliance upon the decision of the Apex Court in *Inderjit Singh Grewal v. State of Punjab*, reported in (2011) 12 SCC 588, in which it has been held:

"32. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 Cr.P.C, 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] .

7. A perusal of the application filed by the respondent reveals that the respondent has sought the relief of maintenance, residence order and also the value

of her articles allegedly retained by the petitioners but the petitioners have not filed any response to the said application.

8. The Hon'ble Apex Court has considered the above judgement in case titled *Krishna Bhattacharjee v. Sarathi Choudhury*, reported in (2016) 2 SCC 705, the relevant paras 3 & 32 are reproduced as under:

"3. Regard being had to the nature of the legislation, a more sensitive approach is expected from the courts whereunder the 2005 Act no relief can be granted, it should never be conceived of but, before throwing a petition at the threshold on the ground of maintainability, there has to be an apposite discussion and thorough deliberation on the issues raised. It should be borne in mind that helpless and hapless "aggrieved person" under the 2005 Act approaches the court under the compelling circumstances. It is the duty of the court to scrutinise the facts from all angles whether a plea advanced by the respondent to nullify the grievance of the aggrieved person is really legally sound and correct. The principle "justice to the cause is equivalent to the salt of ocean" should be kept in mind. The court of law is bound to uphold the truth which sparkles when justice is done. Before throwing a petition at the threshold, it is obligatory to see that the person aggrieved under such a legislation is not faced with a situation of non-adjudication, for the 2005 Act as we have stated is a beneficial as well as assertively affirmative enactment for the realisation of the constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence."

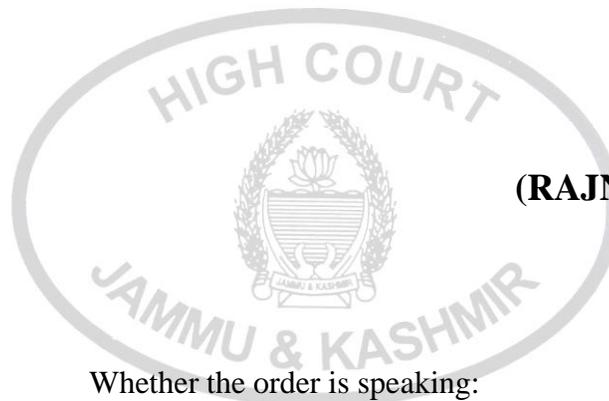
"32. Regard being had to the aforesaid statement of law, we have to see whether retention of stridhan by the husband or any other family members is a continuing offence or not. There can be no dispute that wife can file a suit for realisation of the

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* 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.”**

9. The ratio of the above judgment is that once the cause of action for a particular relief is continuing, the application under Domestic Violence Act cannot be dismissed being time barred. This Court has deliberately in absence of the pleadings from the petitioners with regard to the main application before the trial

court, has refrained itself from returning any findings with regard to the plea of limitation and leave this issue open for the trial court after the petitioners file the response to the same. But the fact remains that this Court cannot dismiss the petition at the threshold only on the issue of maintainability when there are disputed questions of facts, which require adjudication.

10. For all what has been discussed above, this Court does not find any reason whatsoever to quash the complaint. The petitioners are left free to raise all the pleas available with them before the trial court. Any observation made hereinabove, is solely for the purpose of adjudicating the present petition and shall not have any bearing upon the merits of the case. This petition, is, accordingly, dismissed.



(RAJNESH OSWAL)
JUDGE

JAMMU
04.12.2020
Rakesh

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

Yes/No
Yes/No