

Allahabad High Court

Milan Kumar Singh S/O Rajendra ... vs State Of U.P. And Smt. Swapnil ... on 18 July, 2007

Equivalent citations: 2007 CriLJ 4742

Bench: R Misra

JUDGMENT R.N. Misra, J.

1. This application, under Section 482 Cr.P.C has been filed by the applicants, who have been called by Metropolitan Magistrate, Kanpur Nagar vide order dated 21.5.2007 in Criminal Case No. 2262 of 2007 under Sections 12, 17, 18, 19, 20 and 22 of Protection of Women From domestic Violence Act, 2005 (hereinafter referred to as the Act) to show cause within specified time, why action should a not be taken against them on the complaint of opposite party No. 2, Smt. Swapnil Singh. The applicants have prayed for quashing and stay of proceedings of said complaint.

2. Heard learned Counsel for the applicants and learned A.G.A.

3. It appears from the record that the opposite party No. 2 has been married with applicant No. 1. The applicant No. 2 is the father-in-law of opposite party No. 2. Some matrimonial disputes are going on between, the parties, and beside this complaint, some other criminal proceedings are also going on. learned Counsel for the applicants has placed before me a few legal points:. According to him, there is no compliance of Rule 6 of the Protection of Women from Domestic Violence Rules 2006 (hereinafter referred to as the Rules). According that Rules, the complaint must be filed in Form II given in the Rules. He has argued that without compliance of Rule 6 the complaint cannot be entertained by the Magistrate. 6 of the said Rules is quoted below:

Rule. 6: Application to the Magistrate-(1) Every application of the aggrieved person under Section 12 shall be in Form II or as nearly as possible thereto.

(2) An aggrieved person may seek the assistance of the Protection Officer in preparing her application under Sub-rule(1) and forwarding the same to the concerned Magistrate.

(3) In case the aggrieved person is illiterate, the Protection Officer shall read over the application and explain to her the contents thereof.

(4) The affidavit to be filed under Sub-section (2) of Section 23 shall be filed in Form III.

(5) The applications under Section 12 shall be dealt with and the orders enforced in the same manner laid down under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974).

4. Section 12(3) of said Act also provides procedure for filing application under Sub-section (1) which runs as under:

12 (3)-Every application under Sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

5. Though, learned Counsel for the applicants has given a good reasoning in support of his argument, but I see no force in this contention. The word "as nearly as possible thereto" appeared in Section 12(3) of the Act and Rule 6 both. This is social legislation and purpose of the Act is not to the aggrieved person in filing the complaint, but Form has been prescribed in the Rules, only to facilitate filing of complaint so that it may contain all necessary particulars for decision of the case. If any complaint is drafted in such a manner with all necessary particular and usual information required by prescribed Form are contained therein, that cannot be said to be a bad complaint in the eyes of law. The Form prescribed by the Act is nothing else, but proper forum and facility given to the complainant for placing all relevant facts before the court concerned.

The legislature was very much aware of this fact, that is why both in Section 12 and Rule 6, the word "as nearly as possible thereto" has been mentioned. The intention of the legislature was not at all to reject the complaint for not filing in prescribed Form II.

6. The next point, which has been vehemently argued by learned Counsel for the applicants is that the complaint cannot be filed directly to the Magistrate, but it should be filed before the Protection Officer as defined in Section 2(n) of the Act and on receiving the complaint, the Protection Officer will submit Domestic Incident Report and then the Magistrate will take cognizance of the matter. The power of Protection Officer has been given in Section 9 of the Act. The services of service providers as provided in Section 2(r) of the Act may also be taken. The duties of service provider has been provided under Section 10 of the 'Act, But a plain perusal of these provisions clearly show that this argument of learned Counsel for the applicant has no legal force that any aggrieved person cannot file complaint directly to the Magistrate concerned. Section 12 of the Act reads as under:

Section 12. Application to Magistrate-(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service' provider. Protection "Officer or the service provider.

(2) The relief sought for under Sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any Court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under Sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under Sub-section (1) within a period of sixty days from the date of its first hearing.

7. A plain reading of the Section shows that the aggrieved person can file complaint directly to the Magistrate concerned. This is the choice of the aggrieved person that instead of direct approaching the Magistrate, he or she can approach the Protection Officer and in case of emergency, the service provider and with their help to the Magistrate concerned. The word "or" used in Section 12 of the Act is material, which provides a choice of the aggrieved Oh to approach in the aforesaid manner. There is no in direct approaching the Magistrate for taking cognizance in the matter. This is for the Magistrate concerned to take help of Protection Officer and service provider after receiving the complaint provided, he feels it necessary for final disposal of the dispute between the parties. If the parties concerned or Magistrate takes help of the Protection Officer, he, will submit a Domestic Incident Report to the Magistrate concerned.

8. The Form II provides mode of verification of affidavit. Learned Counsel for the applicant has contended that since on the bottom of the complaint, no such verification note has annexed, therefore, also the complaint filed before the Magistrate is bad in law. But this argument has no force because in support of the complaint, the opposite party No. 2 has filed an affidavit a swearing contents of the complaint. Therefore, that lacuna is duly filled up. Any law, does not provide for rejection of the complaint only on the basis that it does not contain verification note on the complaint itself. The purpose of the Act is to cause prima-facie belief to the authority concerned where the complaint is filed on the basis of affidavit or verification note about contents of application. In the present case also, an affidavit has been filed in support of complaint which is properly verified.

9. As regards facts of the case are concerned, that are to be seen by the Magistrate concerned after hearing the parties. The learned Magistrate has issued notice to the applicants vide order dated 21.5.2007 calling them to appear before him and to place their versions on the complaint. Thus, the applicants have opportunity to appear before the Magistrate concerned and to put their versions and after hearing the parties, the magistrate will take decisions according to law.

10. In view of my above discussions I come to the conclusion that this application, under Section 482 Cr.P.C. is devoid of merits and is hereby dismissed.