

**IN THE HIGH COURT AT CALCUTTA**  
**Criminal Revisional Jurisdiction**  
**Appellate Side**

Present:

**The Hon'ble Justice Md. Mumtaz Khan**

**CRR No. 2981 of 2018**

**Sri Chandan Kumar Sahoo & Ors.**

**Vs.**

**Smt. Putul Sahoo**

For the petitioners

: Ms. Minoti Gomes  
Mr. Supriyo Chattopadhyay  
Mr. Sudip Maiti

For the O.P.

: Mr. Suman De  
Mr. Debanshu Ghorai

**Heard on : 04.12.2018**

**Judgment on : 22.01.2019**

**Md. Mumtaz Khan, J. :**

The instant revision has been preferred by the petitioners under Section 401 read with 482 of the Code of Criminal Procedure praying for quashing of the proceeding under Section 12 of the Protection of Women from Domestic Violence Act, 2005 being Misc. Case No. 92/2018 pending before the Court of learned Judicial Magistrate, 2<sup>nd</sup> Court at Tamluk.

It was submitted by Ms. Minoti Gomes, the learned advocate for the petitioners that the proceeding under Section 12 of the Protection of Women from Domestic Violence Act, 2005 brought out by the opposite party no.2 against the petitioners is not maintainable since there was no existence of marital relations either with her husband or the other family members of the petitioner no.1namely the present petitioners since the year 2010 when she lodged the complaint against them before the Magistrate under section 498A IPC. She also submitted that in the year 2011 opposite party No.2 brought out one application under Section 125 Cr.P.C. praying for maintenance and the maintenance was granted in her favour and the husband (Petitioner no.1) is regularly paying the maintenance which the opposite party no.2 has suppressed in her application under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

Ms. Gomes further submitted that in the year 2010 opposite party no.2 lodged a complaint against the petitioners before the learned CJM, Purba Mednipur alleging cruelty under section 498A IPC which the learned Magistrate found the charge against the petitioners not sustainable and acquitted them. But in spite of that and after a long gap of eight years opposite party no.2 has initiated the instant proceeding under Domestic Violence Act, 2005 over the self same facts. According to Ms. Gomes, initiation of proceeding under Domestic Violence Act with an identical allegations, from which petitioners were acquitted, after a long time without any satisfactory explanation for such inordinate delay is not maintainable and such proceeding is abuse of process of law and is liable to be quashed.

Ms. Gomes relied upon the decisions of *Kishan Singh Vs. Gurpal Singh* reported in *AIR 2010 Supreme Court Cases 3624*, *Jai Singh and Ors. Vs. Municipal Corporation of Delhi and Anr.* reported in *(2010)9 Supreme Court Case 385*, *Vijaya Vasant Sawant Vs. Subhangi Shivling Parab* reported in *2013 0 CrLJ 3592*, *Amit Agarwal and Ors. Vs. Sanjay Aggarwal and Ors.* reported in *2017(1) AICLR 741 (Punjab and Haryana High Court)* and of *Shibanikar and Ors. Vs. State of Assam and Ors.* reported in *2017(2) GauLT 622* in support of her submissions.

Learned advocate appearing for the opposite party no.2 while admitting that since 2010 opposite party no.2 is not residing with the petitioners submitted that marital tie of the opposite party no.2 with the petitioner no.1 has not yet been dissolved by any decree of divorce and the domestic relation between the parties is still subsisting and as such proceeding under the Domestic Violence Act, 2005 is quite maintainable.

He further submitted that the proceedings under Section 498A IPC and under Section 12 of the Protection of Women from Domestic Violence Act, 2005 are quite different, standing on different footings and acquittal of the petitioners from the charge under Section 498A IPC will have no bearing on the proceeding under Section 12 of the Domestic Violence Act, 2005. According to him, the application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 shall be dealt with in the same manner as applicable to a proceeding under Section 125 Cr.P.C. and as there is no limitation for initiation of the proceeding under Section 125 Cr.P.C., the same is equally applicable to the proceeding under Section 12 of the Domestic Violence Act, 2005.

I have considered the submissions of the learned Advocates appearing for the respective parties and gone through the materials on record and the relevant provisions of law.

Section 2(a) of the Protection of Women from Domestic Violence Act, 2005 has defined "aggrieved person" which means any woman who is, or has been, in a domestic relationship with the respondent who alleges to have been subjected to any act of domestic violence by the respondent.

"Domestic relationship", as defined in Sub-Section (f) of Section 2 of Act, 2005 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.

Section 3 of the Act 2005 defines the expression "domestic violence". This section enumerates those acts, omissions, commissions or conduct which will be treated as 'domestic violence' for the purpose of the Act.

Section 12 of the Act, 2005 has given right to the aggrieved person or a protection Officer or any other person on behalf of the aggrieved person to present an application to the Magistrate seeking one or more reliefs under the Act. So, an aggrieved person as defined in Section 2(a) of the Act is entitled to initiate proceeding under the Domestic Violence Act, 2005 seeking different remedies like orders for protection, residence, monetary reliefs, custody orders, compensation or damages etc. as available under Sections 18, 19, 20, 21, 22 and

23 of the Act respectively. The proceeding under the Protection of Women from Domestic Violence Act, 2005 is to provide civil remedies to the aggrieved person.

Admittedly, marital tie of the opposite party no.2 with the petitioner no.1, has not been dissolved by any decree of divorce though the opposite party no.2/wife had no contact with her husband and the in-laws and presently she is not residing with them in the same household for a long time. So, legally opposite party no.2 is still the wife of the petitioner no.1 and there exists domestic relationship between the parties despite desertion. As such the proceeding under the Domestic Violence Act, 2005 is quite maintainable.

It is well settled that the proceedings under Section 498A IPC and under Section 12 of the Protection of Women from Domestic Violence Act, 2005 are quite different, standing on different footings. A proceeding under Section 12 of the Domestic Violence Act, 2005 is not a criminal Proceeding even if there are allegations of facts which constitute one or more offences in the Penal Code. A proceeding under Section 12 of the Domestic Violence Act, 2005 is not a criminal Proceeding even if there are allegations of facts which constitute one or more offences in the Penal Code. Whereas, proceeding under section 498A IPC is criminal in nature and the object is to try the perpetrators and punish the guilt while proceeding under Domestic Violence Act, 2005 is to provide civil remedies to the victims of domestic violence which is not available in the criminal law under section 498A IPC. Standard of proof required in two proceedings are entirely different. In civil cases preponderance of probabilities would be sufficient to discharge the onus while in a criminal case the entire burden lies on the

prosecution and the proof beyond reasonable doubt has to be given. In a criminal trial the degree of proof is stricter than what is required in a civil proceeding. A proceeding under the Domestic Violence Act, 2005 is quasi-criminal in nature and not criminal proceeding so as to attract Section 300 of the Code of Criminal Procedure. Under such circumstances door can not be shut to the aggrieved person simply because of identical facts being pleaded in the previous proceeding under Section 498 A IPC which ended in acquittal.

Rule 6 of the Protection of Women from Domestic Violence Rules, 2006 provides that every application of the aggrieved person under Section 12 shall be in Form II or nearly as possible thereto and such application shall be dealt with and the orders enforced in the same manner as laid down in Section 125 of Code of Criminal Procedure, 1973 (2 of 1974). It is not in dispute the instant proceeding under Section 12 of the Domestic Violence Act, 2005 was initiated by opposite party no.2 after long time of her desertion but when the marital ties between her and the petitioner No. 1 are still subsisting, despite desertion and when no time limit has been prescribed in the Act, 2005 for presenting such application, such delay cannot stand in the way of seeking various civil remedies available under that Act.

Undoubtedly, Domestic Violence Act, 2005 has not created any absolute substantive right in favour of the aggrieved person. At the root of an application under Section 12 of the Act there must be allegation of commission of domestic violence by the respondent and for the purpose of determining such domestic violence, the whole facts and circumstances of the case shall be taken into

consideration. It is a different matter whether the opposite party No.2 will succeed in getting any remedy under the Act or not is a question depending on the facts and circumstances of the case which can only be decided by the Magistrate concerned.

It is settled law that no court should come in aid of the party who deliberately conceals some material facts. The courts of law are meant for imparting justice between the parties and one who comes to the court must come with clean hands. In the case at hand, it is evident that the fact of getting maintenance under Section 125 Cr.P.C. do not figure in the proceeding under Domestic Violence Act, 2005. But such omission/non disclosure can not be termed as deliberate concealment of material facts which can render the proceeding under Domestic Violence Act in effective especially when there is no specific bar in maintaining simultaneous proceedings both under Section 125 Cr.P.C. and under the Domestic Violence Act.

The decisions cited by the petitioners in the matter of *Amit Agarwal (Supra)*, *Vijaya Vasant Sawant (Supra)*, *Shibanikar(Supra)*, *Kishan Singh(Supra)* and *Jai Singh (Supra)* do not help the petitioners in the facts and circumstances of the case.

Therefore, taking into account the entire facts and circumstances of the case and the discussions made herein above, I find no merit in the claim of the petitioners to quash of the proceeding of the Case.

Accordingly, the instant revision stands dismissed.

No order as to costs.

Urgent photostat certified copy of this judgement, if applied for, be given to the parties expeditiously upon compliance of necessary formalities in this regard.

**(Md. Mumtaz Khan, J.)**