

ORDER

Respondent has filed application U/sec.227 of Cr.P.C for discharge. It is the contention of respondent that, the marriage was performed with the complainant on 23.05.2010 at Basaveshwar temple, Basaveshwara Colony, Kalaburagi, as per the customs of Hindu, and out of their wedlock a child was born on 05.02.2011. After marriage both were residing at Shahapur by running a computer center, due to perisistant humiliation by the complainant and her family members, respondent came to his house at Kalaburagi and also requested the complainant to reside with him but went in vain. Further it is stated that complainant herself has voluntarily deserted the respondent for more than two years; respondent No.1 had approached the family court at Kalabuargi by filing MC No.86/2014 which came to be allowed and thereby the marital relationship was broken and both were residing separately since four years. But the complainant has lodged the complaint for the offence U/sec.12 of the Protection of the Women and Domestic Violence Act, 2005 against the respondents. Further it is stated that, respondents have not committed the said offence, the petitioner has misused the provisions of law, further it is also stated that, the complainant Should have been filed within a period of one year from the date of incident, further only with an intention to harass the respondent No.1 and his family, the present complaint is filed. The allegations are vague and prayed to allow the application.

2. On the other hand objections are filed contending that the contentions of petition are false, incorrect. The materials placed before this court hold to the satisfaction that it is triable by this court, further contended that, even a divorced wife can seek maintenance from her husband until she is remarried. The petition cannot be allowed until there is a trial, the proceeding involved are summary proceedings and prayed to dismiss the application.

3. Heard both the sides.
4. The points that arise for my consideration are as follows:
 1. Whether the respondent has made out grounds to allow the application?
 2. What order?
5. My findings on the above points as under:
 - Point No.1 In Negative.
 - Point No.2 As per final order,

REASONS

6. **Point No.1**:-The petitioner by name Jyothi has filed a complaint before CDPO against her husband and in-laws, the complaint was forwarded to this court and later notice was issued. Smt BMR advocate has filed vakalat for petitioner and Sri YS advocate is appearing for the respondents. Earlier an application was filed U/sec.239 of Cr.P.C, the same was got dismissed and the present application is filed U/sec.227 of Cr.P.C for discharge.

7. I have perused Sec.227 of Cr.P.C, it falls under Chapter-18 trial before the court of Sessions and Sec.227 of Cr.P.C reads as follows:

Discharge-if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submission of the accused and the prosecution in this behalf, the Judge considers that, there is not sufficient ground for proceeding the accused, he shall discharge the accused and record his reason for doing so.

8. It is the contention of respondent No.1 that petitioner herself had deserted him and they were residing separately for nearly 4 years and thereby, the commission of violence by the respondent and his family members does not arise, further he has also taken the contention that the divorce petition which was filed was allowed by the Hon'ble Family Court and in view of the same, the present petition U/sec.12 of D.V Act is not maintainable. In support of his case, he has furnished the following citations.

1. 2011 (1) Crimes 496 (Del), Harbans Lal Malik and others V/s. Payal Malik, wherein it is held as under:

(1) The domestic relationship between the aggrieved person and the respondent must be present and alive at the time when complaint under Domestic Violence Act is filed and if this relationship is not alive on the date when complaint is filed, the domestic relationship cannot be said to be there.

(2) There can be no domestic relationship of the wife of son with the parents when the parents are not living along along with the son and there can be no domestic relationship of a wife with the parents of her, husband when son along with the wife is living abroad, maintaining a family there and children are born abroad.

(3) Definition of domestic violence pre supposes that the woman is living with the person w ho committed violence and domestic relationship is not dead buried or severed. This does not speak of past violence which a woman suffered before grant of divorce.

(4) In order to make a person as respondent in a petition under Section 12, there must exist a domestic relationship between the respondent and the aggrieved person.

2. Crl Misc No.M-36736 of 2014 (O & M), High Court of Punjab & Haryana, Amit Agarwal and Others V/s. Sanjay Aggarwal and Others, wherein it is held as under:

Though it was an exparte decree but it has not been set aside by the competent Court. Once the domestic relationship came to an end after the decree of divorce the complaint under the Domestic Violence Act could not have been filed.

3. AIR 2011 (NOC) 78 (KAR), Smt Leelavathi.S V/. Murgesh and Others, wherein it is held as under:

The aggrieved wife is clothed with a right to seek relief under the various provisions of the Act against the female relatives of the husband. What the proviso says is that the aggrieved wife or female partner is also given an option to file a complaint against the relatives of the husband or male partner. The reference to 'complaint' in the proviso has to be understood in the light of the provisions contained under Chapter-III of the Act whereunder powers and duties of protection officers and police officers/ service providers and magistrates are enumerated.

4. Criminal Appeal No.1635/2011 dated 23.08.2011, Supreme Court of India, Inderjit Singh Grewal V/s. State of Punjab and Anr. wherein it is held as under:

Criminal- Quashing of complaint-Declaration of void decree-Sections 12, 28 and 32 of Protection of Women from Domestic Violence Act, 2005- Appeal against judgment of High Court dismissing application filed by Appellant for quashing complaint filed by Respondent No.2 under Section 12 of Act- Whether judgment and decree of a competent Civil Court could be declared null and void in collateral proceedings- Held, where a person gets an order/ decree by making misrepresentation or playing fraud upon Competent Authority, such declaration to that effect had to be obtained by person aggrieved from competent court – Such a declaration could not be obtained in collateral proceedings- Respondent No.2 herself had been a party to fraud committed by Appellant upon Civil Court for getting decree of divorce- For quashing a complaint, court had to take its contents on its face value and if it disclosed an offence, court generally does not

interfere with same – In interest of justice, Court could not proceed with complaint-Impugned judgment set aside-Appeal allowed.

Ratio,

Even if a decree was void ab initio, declaration to that effect had to be obtained by person aggrieved from competent court.

9. On the other hand, petitioner has stated that, the contention raised by the respondent needs evidence and can be determined only after full fledged trial and in support of her claim that a divorced women is entitled for maintenance from her husband. Learned counsel for petitioner has furnished written arguments and has produced the following citations.

1. In the Supreme Court of India, Criminal Appellate Jurisdiction, Criminal Appeal No.2028-2029 of 2010, Veluswamy V/s. Patchaiammal, wherein it is held as under:

Not all living relationships will amount to a relation in the nature of marriage to get the benefit of the Act, 2005. To get such benefit, the conditions mentioned must be satisfied and has to be proved by evidence.

Further it is held that, the Protection of Woman from domestic violence Act, 2005, domestic relationship includes not only the relationship of the marriage, but also a relationship in the nature of marriage.

2. Andhra Pradesh High Court, Laxman Rao V/s. D. Kamalabai, 1996 CrI. L.J 1058. wherein it is held as under:

Even a divorced woman who has been divorced on the ground that she had deserted the husband is entitled for maintenance under sub section 1 of 125 of Cr.P.C.

3. Rajasthan High Court, Ramavatar Sharma V/s. Smt Santosh, 1 (2002) DMC 515. wherein it is held as under:

A divorced woman is entitled to claim maintenance from the person of whom she was once the wife. A woman after divorce becomes a destitute. If she cannot maintain herself or remains unmarried, the man who was, once, her husband continues to the under a statutory duty and obligation to provide maintenance to her.

4. Allahabad High Court, Nathu Ram V/s. Smt Athar Kunwar, AIR 1969 ALL 191, wherein it is held as under:

The fact that a wife and husband are leaving separately by mutual consent creates only a persons disability in the wife for receiving an allowance for herself under section 488 of Cr.P.C and it does not bar a claim made by her on behalf of her children.

5. Madras High Court, K. Pandian V/s. A Savitri, 1999 CrL.J 8, wherein it is held as under:

The respondent is entitled for maintenance even though there is agreement for divorce. Further mere giving of lumpsum amount to respondent for future maintenance as referred to in the said document would not preclude the respondent from approaching the court by invoking sec 125 for claiming maintenance. Further, the said court has cited Ramasamy V/s. Rukmini which held that, mere settlement of claim for maintenance by giving a lumpsum amount could not disentitle the wife making claim again for maintenance due to change in circumstances. So in that view of the matter, even assuming that some amount was given by the petitioner to the wife for future maintenance, the wife cannot be restrained from approaching the court to claim maintenance.

10. On relying the citations furnished by the petitioner, it could be stated that, a divorced woman is also entitled for maintenance, but the other aspect that petitioner had herself deserted the respondent No.1 and that he had obtained the divorce from the Hon'ble Family Court, that petitioner and respondent No.1 were residing separately since from last 4 years and she has wrongly involved his family members in the said matter can be determined only after the full fledged trial. Even otherwise, the provision U/sec.227 of Cr.P.C is applicable to those offences which are triable before the Sessions Court, but the said present petition is triable by this court and the provisions cited by the respondent is not applicable. Hence, I answer point No.1 in **Negative**.

11. **Point No.2:-**In view of reasons on point No.1, I proceed to pass the following:

ORDER

Application filed U/sec.227 of Cr.P.C
for discharge is hereby dismissed.

For petitioner evidence,

Call on 14.12.2023.

Prl Civil Judge & JMFC
Shahapur