

ORDER BELOW EXH. 17

The above application i.e. application below Exh. 17 has been moved by non applicant for the rejection of the complaint filled by the applicant on the ground of non filling of the domestic incidence report as well as complaint not as per the section 12 in form II of the act.

2. Perused the record. Heard the learned advocate for the non applicant. It is the contention of the non applicant that the present complaint filed by the applicant under section 12 of the domestic violence act 2005 is pending for adjudication. Non applicant has stated that in the above matter the domestic incidence report has not been filed on record till this date. It has been further stated by the non applicant that the complaint is not as per section 12 in form II of the act 2005.

3. It is stated by the non applicant that as per rule 5 of domestic violence rules, 2006 that

3.1 Upon receipt of a complaint of domestic violence, the Protection Officer shall prepare a domestic incident report in Form I and submit the same to the Magistrate and forward copies thereof to the police officer in charge of the police station within the local limits of jurisdiction of which the domestic violence alleged to have been committed has taken place and to the service providers in that area.

3.2 Upon a request of any aggrieved person, a service provider may record a domestic incident report in Form I and forward a copy thereof to the Magistrate and the Protection Officer having Jurisdiction in the area where the domestic violence is alleged to have taken place.

4. That as per rule 6 of the act every application of the aggrieved person under section 12 to the Magistrate shall be in Form II or as nearly as possible. Therefore, prayed to reject the said complaint of the applicant due to non filling of domestic incident report as well as the complaint not as per the Section 12 in Form II of the act in the interest of justice.

5. Per contra the applicant has filed her reply below Exh. 18 and has strongly opposed the said application.

6. It is the contention of the applicant that the applicant – victim wife of the non applicant has filed the instant matter, the above matter against the non applicant under section 12 of the domestic violence Act-2005. The above matter is filed by the applicant through her advocate as she is aggrieved lady and hence she directly approached before the Hon'ble court and has pleaded the detail fact and incident happened with her on affidavit with supporting document. Therefore according the applicant there is no need to call Domestic Incidence Report.

7. In support to her contention the applicant has brought on record Judgment of Prabha Tyagi Vs. Kamlesh Devi Cr. A. 511/2022 in which the Hon'ble Apex Court has decided that-

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i) Whether the consideration of Domestic Incidence Report is mandatory before initiating the proceedings under Domestic Violence Act, 2005 in order to invoke substantive provisions of Sections 18 to 20 and 22 of the said Act? It is held by the Hon'ble Apex Court, Section 12 does not makes it mandatory for Magistrate to consider a Domestic Incidence Report filed by protection officer or service provider before passing any order under the DV Act. It is clarified that even in the absence of Domestic Incidence Report a Magistrate is empowered to pass both ex-parte or interim as well as final order under the provisions of DV Act.

8. On perusal of record it can be seen that the above application below Exh. 17 was moved by the non-applicant for rejection of complaint on the ground of non filling of domestic incident report to court as well as complaint not as per the section 12 in form II of the act. The non-applicant in the above matter has prayed to reject the said complaint of the applicant on the grounds of non filling of domestic incident report. But on the contrary the applicant has opposed the said application and has stated that the applicant in the above matter has directly approached to court by pleading the detail facts and incidence happened with her on affidavit with a supporting document. Therefore, there is no need to call domestic incident report from protection officer.

9. In support of her contention the applicant has brought on record the judgment of Hon'ble Apex Court in Prabha Tyagi Vs. Kamleshdevi in Cr. A.511/2022 in which it was decided that it is not mandatory for the Magistrate to consider the domestic

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incident report filed by the protection officer before passing an order under D.V. Act. The question discussed in the above judgment was

Whether the consideration of Domestic Incidence Report is mandatory before initiating the proceedings under Domestic Violence Act, 2005 in order to invoke substantive provisions of Sections 18 to 20 and 22 of the said Act? It is held by the Hon'ble Apex Court Section 12 does not make it mandatory for Magistrate to consider a Domestic Incidence Report filed by protection officer or service provider before passing any order under the DV Act. It is clarified that even in the absence of Domestic Incidence Report a Magistrate is empowered to pass both ex parte or interim as well as final order under the provisions of DV Act.

10. Therefore, in the light of above discussion it is clear that the consideration of the Domestic Incident report is not mandatory before initiating any proceeding under the Domestic Violence Act, 2005 in order to invoke substantial provisions of section 18 to 20 and 22 of the Domestic Violence Act. It is held that section 12 does not makes it mandatory for a Magistrate to consider a domestic incident report filed by protection officer or service provider before passing any order under the D.V. Act. It has been clearly stated that even in the absence of domestic incident report the Magistrate is empowered to pass both ex-parte or interim as well as final order under the provisions of the D.V. Act. Hence I proceed to pass the following order:

CNR NO. MHWR030039902022

Cri. M.A. No. 83/2022

Nithu Kaithwas VS. Dinesh Kaithwas + 6

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ORDER

1. The application below Exh 17 is hereby rejected.
2. Copy of order be given free of cost to the parties.

Date : 03.07.2024

(L. T. Takbhaure)
5th Joint Civil Judge, Junior
Division ,Wardha.