

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM (M) 266/2023

Sheenum Qayoom and Anr.

...Petitioner(s)

Through: Mr. Mir Manzoor, Advocate

Vs

Aabid Rashid Qureshi and Ors.

...Respondent(s)

Through: Mr. Mohsin Qadri, Sr.AAG, with
Ms. Maha Majeed, Advocate

CORAM:

HON'BLE MR JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER

15.06.2023

In this petition there are two important questions of law, which are required to be decided that are:-

- (i) Whether the proceedings under Section 12 of the DV Act can be challenged under Article 227 of the Constitution or under Section 482 of CrPC?, and;
- (ii) Whether the aforesaid remedy is available to the aggrieved person before approaching the learned Magistrate and, if necessary, by way of an appeal under Section 29 of the DV Act?

It has been brought to the notice of the Court that the Full Bench of Madras High Court in the case bearing No. ***Crl.O.P.SR.No. 31852 of 2022*** has already decided the aforesaid questions and passed a detailed judgment on 17.11.2022 in the matter. The operative portion of the judgment is reproduced as under:

“75. We now summarise our conclusions to the questions set out in paragraph 1 of this opinion:

- a) A petition under Section 482 Cr.P.C challenging a proceeding under Section 12 of the D.V. Act is not maintainable. A petition under Article 227 of the Constitution is maintainable on a limited ground of patent lack of jurisdiction, as indicated in paragraphs 40 and 41, *supra*.
- b) Except on the limited ground indicated, *supra*, jurisdiction under Article 227 of the Constitution will not be exercised, as a measure of self-imposed restriction, by-passing the statutory remedies under the D.V. Act in the light of the decision of the Supreme Court in **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai**, *supra*.
- c) In the light of the aforesaid conclusion, we uphold the decision of N.Anand Venkatesh, J. in **Pathmanathan**, *supra*, including the directions set out, in paragraph 52 in their entirety, though, in our view, the reference to Section 483 Cr.P.C, therein, may not be appropriate. The decision of the Division Bench in **P. Ganesan**, *supra*, to the extent that it is contrary to this opinion shall stand overruled. *Ex consequenti*, the decision of learned single judges in S.Gowrishankar, *supra*, Sathiyaseelan, *supra*, G.Jayakumar, *supra*, Mohana Seshathri, *supra*, and other cases following or adopting the line of reasoning therein, shall stand overruled, to the extent that they are contrary to the view taken herein.
- d) As a sequitur to the above, it must necessarily follow that the petitions in this batch are not maintainable. We, therefore, see no useful purpose in remitting the matter to the learned single judge to perform the obsequies. Accordingly, exercising power under Order 1 Rule 7 of the Appellate Side Rules, we hold that all the petitions filed under Section 482 Cr.P.C shall stand dismissed at the SR stage itself, preserving all the rights and contentions of the parties and granting liberty to move the Magistrate to agitate their grievances, which shall be considered in

consonance with the directions set out in paragraph 52 of the decision in **Pathmanathan**, *supra*.

However, learned counsel appearing for the petitioner submits that there are conflicting views as the full Bench of Bombay High Court has decided otherwise by holding under Section 482 CrPC challenging the proceedings under Section 12 of the DV Act is maintainable.

Since, important questions of law have been raised in the aforesaid petition, therefore, this Court deems it proper to have the assistance of the learned Senior Additional Advocate General, Mr. Mohsin Qadri, who is requested to assist the Court with regard to the maintainability of the petition under Section 482 CrPC.

Heard in part.

List for continuation of arguments on 12th July, 2023.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR
15.06.2023
MUBASHIR