

A.F.R.

Neutral Citation No. - 2024:AHC:89128

Court No. - 80**Case :- MATTERS UNDER ARTICLE 227 No. - 339 of 2024****Petitioner :- Saleem Ahmad****Respondent :- State Of Up And 2 Others****Counsel for Petitioner :- Sanjay Kumar Verma****Counsel for Respondent :- G.A.,Kuldeep Singh Parmar****Hon'ble Dr. Yogendra Kumar Srivastava,J.**

1. Heard Sri Sanjay Kumar Verma, learned counsel for the petitioner, Sri Pankaj Saxena, learned AGA-I for the State respondents and Sri Kuldeep Singh Parmar, learned counsel for respondent no. 2.

2. The present petition has been filed seeking to assail the order dated 18.08.2022 passed by Judicial Magistrate, Ghatampur, Kanpur Dehat in Case No. 474 of 2019 (Mashroof Raza alias Sonu Khatoon Vs. Waseem Ahmad and others), under Section 12 of Protection of Women from Domestic Violence Act, 2005¹, and the subsequent order dated 03.10.2023 passed by the Additional Sessions Judge, Court No. 1, Kanpur Dehat in Criminal Revision No. 76 of 2022 (Saleem Ahmad vs. State of U.P. and another), whereby the earlier order has been affirmed.

3. The facts of the case as reflected from the pleadings in the petition indicate that an application dated 21.12.2019 was moved by the respondent no. 3 seeking an amendment in the relief clause of an earlier application dated

1 D.V. Act

03.08.2019 which had been filed under Section 12 of the D.V. Act. The application seeking amendment sought deletion of a part of the relief clause, stating that due to an inadvertent typographical error, maintenance had been sought for 'the minor son', whereas the applicant did not have any minor son.

4. The petitioner herein, who is the father of the husband of the respondent no. 3 (applicant in D.V. Case), raised objections to the amendment application by contending that no such amendment was permissible in a criminal proceeding.

5. Learned Magistrate passed an order dated 18.08.2022 allowing the application dated 21.02.2019 seeking amendment, and observing that the said application be read along with the main application, fixed a date for passing of further order.

6. Aggrieved against the aforesaid order, the petitioner preferred a revision, which has been rejected by an order dated 03.10.2023, wherein the revisional court has held that proceedings under the D.V. Act are *quasi* civil in nature, and accordingly, amendments to pleadings were permissible.

7. The order passed by the learned Magistrate on the amendment application and the subsequent revisional order, are sought to be assailed by means of the present petition.

8. Learned counsel for the petitioner has sought to challenge the orders passed by the learned Magistrate and the revisional court by referring to the factual aspects of the case and the defence which is to be set up on behalf of the petitioner to contest the proceedings.

9. Learned AGA-I appearing for the State respondents and also the counsel appearing for the respondent no. 3 have supported the orders passed by the learned Magistrate and also the revisional court by submitting that proceedings under D.V. Act are essentially of a civil nature and in a situation where amendment is necessary, the Court concerned would have power to allow such amendments.

10. It is submitted that the amendment sought in the present case was to correct an inadvertent typographical error, and the objections which were sought to be raised by the petitioner herein were solely with a view to delay the proceedings, and the said objections have been rightly turned down by the learned Magistrate.

11. The question which, thus, falls for consideration in the present case is with regard to the extent of the powers of amendment of pleadings exercisable in proceedings under the D.V. Act.

12. The proceedings under the D.V. Act, in the instant case, were initiated pursuant to an application filed under Section 12 wherein the reliefs sought are referable to the provisions under Sections 18, 19, 20 and 22 of the said Act.

13. The genesis of the D.V. Act is traceable to the General Recommendation No. XII (1989) made by the United Nations Committee on Convention of Elimination of all Forms of Discrimination against Women (CEDAW), in terms of which it was recommended that the State parties, should act to protect women against violence of any kind especially, that occurring within the family. The Vienna Accord of 1994 and the Beijing Declaration and Platform for Action (1995), acknowledged that domestic violence was a human rights issue and a serious deterrent to development.

14. The Protection from Domestic Violence Bill, 2002 upon being tabled in the Lok Sabha was referred to a Standing Committee of the Ministry of Human Resource Development in the Rajya Sabha. The Committee submitted its 124th Report on the Bill (2002), wherein it was stated that the proposed legislation was aimed at “providing a remedy under the civil law which is intended to preserve the family and at the same time provide protection to victims of domestic violence.”

15. The object of the Act was to bridge the gap between the existing procedures in civil and criminal law by providing a civil remedy for a complaint of domestic violence without disrupting the harmony in the family. This is also clear from the following extract from the Report of the Standing Committee:

“ ...the existing civil, personal or criminal laws leave certain gaps in addressing the issue of Domestic Violence. Under criminal law, if a

husband perpetrates violence on his wife, she may file a complaint under Section-498 A of IPC. Similarly, under the civil law, if there is disharmony in a family and the husband and wife cannot live together, any one of them may file a suit for separation followed by divorce. However, the present Bill addresses such situation where there is some disharmony in the family but the situation has not yet reached a stage where either separation or divorce proceeding has become inevitable and the aggrieved woman also for some reasons does not want to initiate criminal proceedings against her perpetrator. Therefore, the Bill seeks to give the aggrieved woman an alternative avenue whereby she can insulate herself from violence without being deprived of the basic necessities of life and without disintegrating her family.”

16. The D.V. Act was enacted as a law (Act 43 of 2006) with the purpose of providing a remedy in civil law for the protection of women from being victims of domestic violence and to protect the occurrence of domestic violence in society. The enactment of law was made keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution and to provide for a remedy in the civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. The scheme of the Act envisages that the order to be passed by the Magistrate, and a complaint by the aggrieved person, would be of a civil nature, and if the said order is violated, it would assume the character of criminality. The legislative intent of the enactment, is reflected in the statement of objects and reasons of the Act, which reads as follows:

“STATEMENT OF OBJECTS AND REASONS”

Domestic violence is undoubtedly a human Right issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General

Recommendation NO. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially the occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under section 498A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14,15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

4. The Bill, *inter alia*, seeks to provide for the following:-

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

(ii) It defines the expression "domestic violence" to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

(v) It provides for appointment of Protection Officers and registration

of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc."

17. An 'aggrieved person' is defined under Section 2(a) of the D.V. Act to mean any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any Act of domestic violence by the respondent. It is noticeable that the grievance of the 'aggrieved person' under the D.V. Act, is to be considered against a 'respondent' as defined under Section 2(q) of the Act. The grievances which may be raised and the reliefs that may be sought under the D.V. Act, are not to be in the nature of a formal accusation as in a criminal case, and the person against whom the relief is sought, is therefore not referred to as an accused.

18. The procedure for obtaining orders of reliefs are provided under Chapter IX of the D.V. Act, and in terms thereof the various reliefs that can be granted are as follows: (i) protection orders under Section 18; (ii) residence order under Section 19; (iii) monetary reliefs under Section 20; (iv) custody orders under Section 21; and (v) compensation orders under Section 22.

19. Amongst the various reliefs that may be claimed under the D.V. Act, it is only the breach of a protection order, or of an interim protection order by the respondent, that is held to be an offence in terms of Section 31 with a penalty specified, and in terms of Section 32, the said offence is cognizable and non-bailable.

20. The proceedings before a magistrate, which are to commence with filing of an application under Section 12, seeking various kinds of reliefs, provided for, under Chapter IX, are essentially of a civil nature, and it is only upon breach of a protection order, or of an interim protection order, that the said proceedings get transformed into criminal proceedings.

21. The breach of protection order or of an interim protection order, is held to be an offence under Section 31(1), and Section 31(2) uses the expression 'accused' only when an offence i.e., a breach of a protection order or of an interim protection order is alleged to have been committed.

22. It would be seen that criminality under Section 31 is attached only to breach of a protection order under Section 18, or of an interim protection order under Section 23 order, or under Section 33 for failure of a Protection Officer to discharge his duties without sufficient cause.

23. The question as to whether the reliefs envisaged under Chapter IX of the D.V. Act are of a civil nature, was examined in **Kunapareddy Alias Nookala Shanka Balaji Vs. Kunapareddy Swarna Kumari and Another**², wherein after considering the purpose of the enactment and its scheme, it was held that the order that is to be passed by the Magistrate on a complaint by the aggrieved person, would be of a civil nature, and it is only when the said order is violated that it assumes the character of

² (2016) 11 SCC 774

criminality. The observations made in the judgment, in this regard, are as follows:

“12. In fact, the very purpose of enacting the DV Act was to provide for a remedy which is an amalgamation of civil rights of the complainant i.e. aggrieved person. Intention was to protect women against violence of any kind, especially that occurring within the family as the civil law does not address this phenomenon in its entirety. It is treated as an offence under Section 498-A of the Penal Code, 1860. The purpose of enacting the law was to provide a remedy in the civil law for the protection of women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. It is for this reason, that the scheme of the Act provides that in the first instance, the order that would be passed by the Magistrate, on a complaint by the aggrieved person, would be of a civil nature and if the said order is violated, it assumes the character of criminality.....

.....

13. Procedure for obtaining order of reliefs is stipulated in Chapter IV of the DV Act which comprises Sections 12 to 29. Under Section 12 an application can be made to the Magistrate by the aggrieved person or Protection Officer or any other person on behalf of the aggrieved person. The Magistrate is empowered, under Section 18, to pass protection order. Section 19 of the DV Act authorises the Magistrate to pass residence order which may include restraining the respondent from dispossessing or disturbing the possession of the aggrieved person or directing the respondent to remove himself from the shared household or even restraining the respondent or his relatives from entering the portion of the shared household in which the aggrieved person resides, etc. Monetary reliefs which can be granted by the Magistrate under Section 20 of the DV Act includes giving of the relief in respect of the loss of earnings, the medical expenses, the loss caused due to destruction, damage or removal of any property from the control of the aggrieved person and the maintenance for the aggrieved person as well as her children, if any. Custody can be decided by the Magistrate which was granted under Section 21 of the DV Act. Section 22 empowers the Magistrate to grant compensation and damages for the injuries, including mental torture and emotional distress, caused by the domestic violence committed by the appellant. All the aforesaid reliefs that can be granted by the Magistrate are of civil nature. Section 23 vests the Magistrate with the power to grant interim ex parte orders. It is, thus, clear that various kinds of reliefs which can be obtained by the aggrieved person are of civil nature. At the same time, when there is a breach of such orders passed by the Magistrate, Section 31 terms such a breach to be a punishable offence.”

24. The procedure to be followed by the court in 'proceedings' under the D.V. Act, is prescribed under Section 28 of the Act. Sub-section (1) of Section 28, while

drawing a distinction between 'proceedings' under Sections 12, 18, 19, 20, 21, 22 and 23, and 'offences' under Section 31, states that that they would be governed by the provisions of the Cr.P.C. For ease of reference, Section 28 of the D.V. Act is being extracted below:

“Procedure.--(1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973. (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.”

25. It is noticeable that Section 28(1) commences with the expression “save as otherwise provided by this Act”, the effect of which would be to exclude the application of the Code in areas where the procedure has been expressly provided under the D.V. Act or under the Protection of Women from the Domestic Violence Rules, 2006³.

26. It is further noticeable that Section 28(2) begins with a *non obstante* clause which empowers the court to lay down its own procedure for disposal of an application under Section 12 or under Section 23(2).

27. The aforesaid may be seen as exceptions to the general rule with regard to the applicability of the provisions of the Cr.P.C. to proceedings under the D.V. Act.

28. The 'Statement of Objects and Reasons' of the enactment is clearly indicative that the legislature was conscious that in a situation where a woman is subjected to

³ D.V. Rules

cruelty by her husband or her relatives, it would be an offence under Section 498 A of I.P.C.; however, the civil law does not address the phenomena in its entirety. The legislation, was, accordingly, brought in place, keeping in view the rights guaranteed under Articles 14, 15 and 16 of the Constitution and to provide for a remedy under the civil law intended to protect a woman from being victim of domestic violence and to prevent the occurrence of domestic violence in society.

29. The procedure set out under the D.V. Act and the D.V. Rules, is sufficiently indicative of a conscious deviation from the manner in which a criminal court proceeds to take cognizance, issue process and try the accused under the provisions of the Cr.P.C. It is only in case of a breach of a protection order or of an interim protection order, passed under the provisions of the D.V. Act, that an element of criminality is sought to be attached. At the stage of the proceedings related to an application under Section 12, the applicability of the Cr.P.C., would be seen to be circumscribed by the provisions under Section 28 of the D.V. Act.

30. The question as to whether a proceeding is civil or not, was examined in **State of Uttar Pradesh Vs. Mukhtar Singh**⁴ and it was stated thus:

“Whether a proceeding is civil or not depends, in my opinion, on the nature of the subject-matter of the proceeding and its object, and not on the mode adopted or the forum provided for the enforcement of the right. The expression “civil rights” in a broad sense comprises the entire bundle of

4 AIR 1957 All 505

private rights that a human being or any person recognises by law as a juristic entity might, as such, possess under law and for the recognition, declaration or enforcement of which law makes a provision.”

31. The test to be applied for examining the character of a proceeding before a Court or authority, and the distinction between a 'civil proceeding' and a 'criminal proceeding', was formulated by a Constitution Bench of the Supreme Court in **SAL Narayan Row Vs. Ishwarlal Bhagwandas**⁵, and it was held as follows:

“**8.**The expression “civil proceeding” is not defined in the Constitution, nor in the General Clauses Act. The expression in our judgment covers all proceedings in which a party asserts the existence of a civil right conferred by the civil law or by statute, and claims relief for breach thereof. A criminal proceeding on the other hand is ordinarily one in which if carried to its conclusion it may result in the imposition of sentences such as death, imprisonment, fine or forfeiture of property. It also includes proceedings in which in the larger interest of the State, orders to prevent apprehended breach of the peace, orders to bind down persons who are a danger to the maintenance of peace and order, or orders aimed at preventing vagrancy are contemplated to be passed.

“.....The character of the proceeding, in our judgment, depends not upon the nature of the tribunal which is invested with authority to grant relief, but upon the nature of the right violated and the appropriate relief which may be claimed. A civil proceeding is therefore one in which a person seeks to enforce by appropriate, relief the alleged infringement of his civil rights against another person or the State, and which if the claim is proved would result in the declaration express or implied of the right claimed and relief such as payment of debt, damages, compensation, delivery of specific property, enforcement of personal rights, determination of status etc.”

32. The distinction between a 'civil proceeding' and a 'criminal proceeding', and the test to be applied for the purpose was reiterated in **Ram Kishan Fauji Vs. State of Haryana and Others**⁶. It was observed as follows:

31. “..... As far as criminal proceeding is concerned, it clearly stipulates that a criminal proceeding is ordinarily one which, if carried to its conclusion, may result in imposition of (i) sentence, and (ii) it can take within its ambit the larger interest of the State, orders to prevent apprehended breach of

⁵ AIR 1965 SC 1818

⁶ (2017) 5 SCC 533

peace and orders to bind down persons who are a danger to the maintenance of peace and order. The Court has ruled that the character of the proceeding does not depend upon the nature of the tribunal which is invested with the authority to grant relief but upon the nature of the right violated and the appropriate relief which may be claimed.”

33. The question as to whether the nature of proceedings under the various provisions of the D.V. Act, would be of a civil or criminal nature, was clarified in **Kunapareddy Alias Nookala Shanka Balaji Vs. Kunapareddy Swarna Kumari and Another**, wherein referring to Section 28, it was observed that in respect of a petition filed under Sections 18 and 20, though proceedings are to be governed by the Cr.P.C., such proceedings, undisputedly; would be predominantly of a civil nature. It was also observed that all the reliefs stipulated under Chapter IV of the D.V. Act, which comprises Sections 12 to 29 and can be granted by a Magistrate, are of a civil nature. The observations made in the judgment, are as follows:

“**12.** In fact, the very purpose of enacting the DV Act was to provide for a remedy which is an amalgamation of civil rights of the complainant i.e. aggrieved person. Intention was to protect women against violence of any kind, especially that occurring within the family as the civil law does not address this phenomenon in its entirety. It is treated as an offence under Section 498-A of the Penal Code, 1860. The purpose of enacting the law was to provide a remedy in the civil law for the protection of women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. It is for this reason, that the scheme of the Act provides that in the first instance, the order that would be passed by the Magistrate, on a complaint by the aggrieved person, would be of a civil nature and if the said order is violated, it assumes the character of criminality.....”

13. Procedure for obtaining order of reliefs is stipulated in Chapter IV of the DV Act which comprises Sections 12 to 29. Under Section 12 an application can be made to the Magistrate by the aggrieved person or Protection Officer or any other person on behalf of the aggrieved person. The Magistrate is empowered, under Section 18, to pass protection order. Section 19 of the DV Act authorises the Magistrate

to pass residence order which may include restraining the respondent from dispossessing or disturbing the possession of the aggrieved person or directing the respondent to remove himself from the shared household or even restraining the respondent or his relatives from entering the portion of the shared household in which the aggrieved person resides, etc. Monetary reliefs which can be granted by the Magistrate under Section 20 of the DV Act includes giving of the relief in respect of the loss of earnings, the medical expenses, the loss caused due to destruction, damage or removal of any property from the control of the aggrieved person and the maintenance for the aggrieved person as well as her children, if any. Custody can be decided by the Magistrate which was granted under Section 21 of the DV Act. Section 22 empowers the Magistrate to grant compensation and damages for the injuries, including mental torture and emotional distress, caused by the domestic violence committed by the appellant. All the aforesaid reliefs that can be granted by the Magistrate are of civil nature. Section 23 vests the Magistrate with the power to grant interim ex parte orders. It is, thus, clear that various kinds of reliefs which can be obtained by the aggrieved person are of civil nature. At the same time, when there is a breach of such orders passed by the Magistrate, Section 31 terms such a breach to be a punishable offence.

14. In the aforesaid scenario, merely because Section 28 of the DV Act provides for that the proceedings under some of the provisions including Sections 18 and 20 are essentially of civil nature.....

34. The nature of proceedings instituted upon an application under Section 12 of the D.V. Act, and whether the filing of such application can be equated to lodging of a complaint or initiation of prosecution, was examined in a recent decision in **Kamatchi Vs. Lakshmi Narayanan**⁷ and clarifying the law on the subject it was held that the Magistrate after hearing the parties and considering the material on record, may pass an appropriate order under Section 12, and only thereafter, the breach of such order would constitute an offence as provided under Section 31; at the time when the application under Section 12 is preferred, no offence is committed as per the terms of the

7 (2022) 15 SCC 50

provisions of the D.V. Act.

35. There is a marked distinction between a 'complaint' contemplated under the D.V. Act and the D.V. Rules, and a 'complaint' under the Cr.P.C.. A complaint under Rule 2(b) of the D.V. Rules, has been defined as an allegation made orally or in writing by any person to a Protection Officer, whereas a complaint under Section 2(d) Cr.P.C. is any allegation made orally or in writing to a Magistrate with a view to taking action under Cr.P.C. that some person whether known or known has committed an offence. The Magistrate dealing with an application under Section 12 is not called upon to take action for the commission of an offence; hence what is contemplated is not a complaint but an application to a Magistrate as set out in Rule 6(1) of the D.V. Rules. The filing of an application under Section 12 of the D.V. Act, can, therefore, not be equated to the lodging of complaint or initiation of prosecution as contemplated under the provisions of the Cr.P.C.

36. The question as to whether an amendment would be permissible in a criminal complaint or a petition filed under the provisions of Cr.P.C., was examined in **S.R. Sukumar Vs. S. Sunaad Raghuram**⁸, and laying down principles for the purpose it was held that although there was no specific provision in the Cr.P.C. to permit amendment of a complaint or a petition, if the amendment sought to be made related to a simple infirmity, which was curable by means of a formal amendment and by allowing such

⁸ (2015) 9 SCC 609

amendment no prejudice would be caused to other side, the court may permit such amendment to be made. Referring to an earlier decision in **U.P. Pollution Control Board v. Modi Distillery**⁹ it was observed as follows:

“18. Insofar as merits of the contention regarding allowing of amendment application is concerned, it is true that there is no specific provision in the Code to amend either a complaint or a petition filed under the provisions of the Code, but the courts have held that the petitions seeking such amendment to correct curable infirmities can be allowed even in respect of complaints. In *U.P. Pollution Control Board v. Modi Distillery* wherein the name of the company was wrongly mentioned in the complaint, that is, instead of Modi Industries Ltd. the name of the company was mentioned as Modi Distillery and the name was sought to be amended. In such factual background, this Court has held as follows:

“6. ...The learned Single Judge has focussed his attention only on the technical flaw in the complaint and has failed to comprehend that the flaw had occurred due to the recalcitrant attitude of Modi Distillery and furthermore the infirmity is one which could be easily removed by having the matter remitted to the Chief Judicial Magistrate with a direction to call upon the appellant to make the formal amendments to the averments contained in Para 2 of the complaint so as to make the controlling company of the industrial unit figure as the accused concerned in the complaint. All that has to be done is the making of a formal application for amendment by the appellant for leave to amend by substituting the name of Modi Industries Limited, the company owning the industrial unit, in place of Modi Distillery. ... Furthermore, the legal infirmity is of such a nature which could be easily cured.”

19. What is discernible from *U.P. Pollution Control Board* case is that an easily curable legal infirmity could be cured by means of a formal application for amendment. If the amendment sought to be made relates to a simple infirmity which is curable by means of a formal amendment and by allowing such amendment, no prejudice could be caused to the other side, notwithstanding the fact that there is no enabling provision in the Code for entertaining such amendment, the court may permit such an amendment to be made. On the contrary, if the amendment sought to be made in the complaint does not relate either to a curable infirmity or the same cannot be corrected by a formal amendment or if there is likelihood of prejudice to the other side, then the court shall not allow such amendment in the complaint.

9 (1987) 3 SCC 684

20. In the instant case, the amendment application was filed on 24-5-2007 to carry out the amendment by adding Paras 11(a) and 11(b). Though, the proposed amendment was not a formal amendment, but a substantial one, the Magistrate allowed the amendment application mainly on the ground that no cognizance was taken of the complaint before the disposal of amendment application. Firstly, the Magistrate was yet to apply the judicial mind to the contents of the complaint and had not taken cognizance of the matter. Secondly, since summons was yet to be ordered to be issued to the accused, no prejudice would be caused to the accused. Thirdly, the amendment did not change the original nature of the complaint being one for defamation. Fourthly, the publication of poem *Khalnayakaru* being in the nature of subsequent event created a new cause of action in favour of the respondent which could have been prosecuted by the respondent by filing a separate complaint and therefore, to avoid multiplicity of proceedings, the trial court allowed the amendment application. Considering these factors which weighed in the mind of the courts below, in our view, the High Court rightly declined to interfere with the order passed by the Magistrate allowing the amendment application and the impugned order does not suffer from any serious infirmity warranting interference in exercise of jurisdiction under Article 136 of the Constitution.”

37. The aforesaid authorities lead to the conclusion that even in criminal cases governed by the Cr.P.C., the court is not powerless and may allow amendment in appropriate cases, which may be in situations where an amendment seeks to introduce facts based on subsequent events, or to avoid multiplicity of the proceedings. An amendment may also be permissible if it relates to a simple infirmity which is curable by means of a formal amendment and in allowing such amendment no prejudice is likely to be caused to the other side.

38. There would, thus, be no complete or absolute bar in seeking amendment even in complaints before criminal courts which are governed by Cr.P.C., although the power to allow such amendment would have to be exercised with due caution and sparingly, in appropriate circumstances.

39. The question as to whether a court dealing with an application filed under the D.V. Act has the power to allow amendments to the application originally filed, was also examined in the **Kunapareddy (supra)** case and after considering the provision contained under sub-section (2) of Section 28, which empowers the court to lay down its procedure for disposal of an application filed under Section 12 or under Section 23, it was held that the court is not powerless in this regard and may allow amendments in appropriate cases. This would be in situations where the amendment becomes necessary, in view of the subsequent events or to avoid multiplicity of litigation. It was observed as follows:

“16.It cannot be said that the court dealing with the application under the DV Act has no power and/or jurisdiction to allow the amendment of the said application. If the amendment becomes necessary in view of subsequent events (escalation of prices in the instant case) or to avoid multiplicity of litigation, court will have the power to permit such an amendment. It is said that procedure is the handmaid of justice and is to come to the aid of the justice rather than defeating it. It is nobody's case that Respondent 1 was not entitled to file another application claiming the reliefs which she sought to include in the pending application by way of amendment. If that be so, we see no reason, why the applicant be not allowed to incorporate this amendment in the pending application rather than filing a separate application.....

17. What we are emphasising is that even in criminal cases governed by the Code, the Court is not powerless and may allow amendment in appropriate cases. One of the circumstances where such an amendment is to be allowed is to avoid the multiplicity of the proceedings. The argument of the learned counsel for the appellant, therefore, that there is no power of amendment has to be negated.

18. In this context, provisions of Sub-Section(2) of Section 28 of the DV Act gain significance. Whereas proceedings under certain sections of the DV Act as specified in sub-Section (1) of Section 28 are to be governed by the Code, the Legislature at the same time incorporated the provisions like sub-Section(2) as well which empowers the Court to lay down its own procedure for disposal of the application under

Section 12 or Section 23(2) of the DV Act. This provision has been incorporated by the Legislature keeping a definite purpose in mind. Under Section 12, an application can be made to a Magistrate by an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person to claim one or more reliefs under the said Act. Section 23 deals with the power of the Magistrate to grant interim and ex-parte orders and sub-Section (2) of Section 23 is a special provision carved out in this behalf which is as follows:

“23. (2).If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.”

19. The reliefs that can be granted by the final order or by an interim order, have already been pointed out above wherein it is noticed that most of these reliefs are of civil nature. If the power to amend the complaint/application, etc. is not read into the aforesaid provision, the very purpose which the Act attempts to subserve itself may be defeated in many cases.”

40. The proceedings before the Magistrate relating to reliefs claimed under Chapter IV of the D.V. Act, having been held essentially to be of a civil nature, the power to amend the complaint/application would have to be read in relevant statutory provisions, as a necessary concomitant.

41. Having regard to the aforesaid, the contention sought to be raised on behalf of the petitioner that the Magistrate before whom the application under Section 12 of the D.V. Act, was pending, did not have the jurisdiction or the power to allow the application seeking amendment in the relief clause of the original application, cannot be legally sustained.

42. The order passed by the learned Magistrate allowing the amendment application, and the subsequent order of

affirmation by the revisional court, cannot be said to suffer from any illegality, which may warrant interference by this Court, in exercise of its supervisory power, under Article 227 of the Constitution.

43. The petition thus fails and is accordingly **dismissed**.

Order Date :- 14.5.2024
Arun K. Singh

[Dr. Y.K. Srivastava, J.]