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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16.05.2024

+ CRL.M.C. 3967/2022 & CRL.M.A. 16467/2022

DR. KALIND PARASHAR Petitioner

Through: Ms.Shimpy Sharma, Adv. along
with Mr.Braham Raj Sharma,
POA.

versus

DR. KAVERI PARASHAR Respondent

Through: Mr.M.S. Vinaik, Mr.S.K. Sagar,
Ms.Ragini Vinaik,
Ms.Kanishka Sharma,
Ms.Tahnglunkim &
Mr.Gaikhuanlung, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the Order dated 26.04.2022 passed by the learned Additional Sessions Judge (NDPS-2), Central District, Tis Hazari Courts, Delhi, (hereinafter referred to as the 'ASJ') in CA No. 18/2020 titled *Dr.Kalindi Parashar v. Dr.Kaveri Parashar (Kapoor)* and the Order dated 27.11.2019 passed by the learned Metropolitan Magistrate (Mahila Court-02), Central District, Tis Hazari Courts, Delhi, (hereinafter referred to as the 'Metropolitan Magistrate') in Complaint Case no. 512239/2016



titled *Dr.Kaveri Parashar v. Dr.Kalind Parashar & Ors.* (hereinafter collectively referred to as the ‘Impugned Orders’).

2. The above complaint has been filed by the respondent herein under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short, ‘DV Act’), *inter alia*, alleging therein as under:-

“4. That the complainant has permanent abode at 748, Farash Khana, Delhi-110006 and temporary abode of resident at G-6, Aditya East Park Apartment, Chander Nagar (Ghaziabad).”

3. The petitioner herein, alleging that the Court of the learned Metropolitan Magistrate at Delhi does not have the territorial jurisdiction to entertain the above complaint, filed an application seeking the dismissal of the said complaint. The said application was dismissed by the learned Metropolitan Magistrate vide Impugned Order dated 27.11.2019, observing as under: -

“It is the considered view of the court that at this stage, the objections mused by the respondent no.1 for dismissal of the present case on the ground of territorial jurisdiction and others cannot be taken into consideration as the same can only be proved after both the parties have lead their respective evidence. The case filed by the complainant is duly annexed with affidavit and the copy of her adhar card as well as voter ID card has showing her residence to be Farshkhana which falls within the territorial jurisdiction of this court. Therefore, the application of the respondent no.1 stands dismissed.”



4. The petitioner, being aggrieved of the said Order, challenged the same by way of an appeal under Section 29 of the DV Act, being CA No. 18/2020, which has been dismissed by the Impugned Order dated 26.04.2022 passed by the learned ASJ observing that the learned Metropolitan Magistrate has rightly held that the objection to the territorial jurisdiction can only be considered when both the parties have led their respective evidence on the same.

5. The learned counsel for the petitioner submits that the marriage between the parties was solemnised in the year 2009 at Solan, Himachal Pradesh; a child from the wedlock was born in the United States of America ('U.S.A.') in 2010, and is a U.S.A. citizen. She submits that there are previous litigations filed by the petitioner in the U.S.A., where orders have been passed not only pertaining to the custody of the child but also granting divorce to the parties. She submits that the respondent thereafter travelled to India and first filed a complaint against the petitioner before the Ghaziabad Police in Uttar Pradesh. She submits that the said complaint, however, has now been quashed by the High Court of Judicature at Allahabad. She submits that immediately on the filing of the said complaint before the Ghaziabad Police and finding that no action has been taken thereon, the respondent with *mala fide* intent filed the subject complaint under the DV Act. She submits that in the said complaint itself, the respondent admits that she is residing in Ghaziabad, Uttar Pradesh. She submits that, therefore, the



jurisdiction of the Court of the learned Metropolitan Magistrate at Delhi could not have been invoked. She submits that the petition even otherwise has been filed with *mala fide*.

6. On the other hand, the learned counsel for the respondent submits that the address at Farsh Khana, Delhi given in the complaint is the permanent ancestral home of the family of the respondent. He submits that immediately on landing in India, she had been taken by her uncle to Ghaziabad, Uttar Pradesh where she stayed temporarily and only for a few days. He submits that, therefore, the respondent has truthfully disclosed that while her permanent address is in Delhi, she is temporarily residing in Ghaziabad, Uttar Pradesh.

7. He submits that as far as the *mala fide* intent in filing the subject complaint is concerned, though it is vehemently denied, in any case, cannot be a ground for dismissal of the Complaint at a preliminary/nascent stage.

8. I have considered the submissions made by the learned counsels of the parties.

9. Section 27(1) of the DV Act, *inter alia*, confers jurisdiction on a Judicial Magistrate of the First Class or a Metropolitan Magistrate within the local limit of which the person aggrieved ‘permanently or temporarily resides’ or carries on business or is employed. Section 27 of the DV Act is reproduced hereinbelow:

“27. Jurisdiction.—(1) The court of Judicial Magistrate of the first class or the



Metropolitan Magistrate, as the case may be, within the local limits of which—

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.”

(Emphasis Supplied)

10. In the present case, the respondent has, in the complaint, alleged that she is permanently residing within the local limits of the learned Metropolitan Magistrate before whom the subject complaint has been filed. She has supported the plea with her Aadhaar Card and Voter Id Card. Whether the same is correct or not, has to be determined on the respective evidence of the parties in the trial. At this stage, it has to be accepted on a demurrer and, therefore, the complaint cannot be scuttled at this stage on the ground of lack of territorial jurisdiction.

11. As far as the *mala fide* in the filing of the complaint after the same had earlier been filed before the Ghaziabad Police is concerned, this submission also cannot confer a ground to the petitioner to seek quashing of the complaint at this stage.

12. Similar is the fate of the challenge to the complaint based on the earlier litigations that have been initiated by the petitioner before the Courts in the U.S.A. The effect of these



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litigations has to be considered by the learned Metropolitan Magistrate at an appropriate stage, after hearing the parties.

13. Accordingly, I find no merit in the present petition. The same is dismissed. There shall be no orders as to costs.

14. The pending application is also disposed of being rendered infructuous.

NAVIN CHAWLA, J

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Click here to check corrigendum, if any