



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-50534-2025

Date of decision: 10.09.2025

Vijay Kumar Soni

....Petitioner

versus

Beena Devi and Another

...Respondents

CORAM: HON'BLE MS. JUSTICE SHALINI SINGH NAGPAL

Present: Mr. Nipun Verma, Advocate
for the petitioner.

SHALINI SINGH NAGPAL, J.

1. Order dated 01.08.2025 of learned Additional Sessions Judge, Charkhi Dadri in Criminal Appeal No.23 of 2025 and order dated 10.01.2025 of learned Judicial Magistrate First Class, Charkhi Dadri, allowing complaint under Section 12 of The Protection of Women from Domestic Violence Act, 2005 have been impugned by way of this petition under Section 528 Bhartiya Nagarik Suraksha Sanhita, 2023.

2. Learned Counsel for the petitioner submits that in the proceeding under Section 12 of The Protection of Women from Domestic Violence Act, 2005 Act (hereinafter referred to as '**the Act**'), petitioner and his mother were illegally proceeded against *ex parte* on 01.02.2024. The *ex parte* order was passed in spite of presence of counsel for petitioner. Subsequently, an application was moved for setting aside the *ex parte* order which was allowed vide order dated 02.09.2024 subject to payment of 50% arrears to the complainant. It was urged that though petitioner's father was ready to make payment of 50% arrears, he was

rebuked by learned Judicial Magistrate First Class when he asked for quantifying the amount. On 24.10.2024, petitioner's application for depositing the amount was thrown away by the Court and *ex parte* evidence was recorded. Finally, *ex parte* arguments were heard and impugned order dated 10.01.2025 was passed.

3. Learned Counsel further argued that an appeal against the *ex parte* order dated 10.01.2025 was filed before learned Additional Sessions Judge, which was fixed for hearing on 02.08.2025. On 02.08.2025, learned Additional Sessions Judge directed the petitioner to deposit Rs.5,00,000/- in the account of respondent as a condition precedent to hearing of the appeal. Therefore, both orders dated 10.01.2025 and 02.08.2025 deserved to be set aside.

4. Record perused. Complaint under Section 12 of the Act, 2005 was instituted by Beena Devi, respondent herein against petitioner Vijay Kumar Soni and his mother Sheela Devi. In that case, interim maintenance was awarded. Petitioner Vijay Kumar Soni preferred an appeal under Section 29 of the Act 2005 against the order granting interim maintenance. The appeal was, however, dismissed on 27.05.2025, having become infructuous. Meanwhile, in the complaint under Section 12 of the Act, respondents Nos.1 and 2 (petitioner and respondent No.2 herein) were proceeded against *ex parte* on 01.02.2024.

5. On 03.04.2024, when conditional warrants of arrest against Vijay Kumar were received back unexecuted, application was moved for setting aside the *ex parte* order dated 01.02.2024. Vide order dated 02.09.2024, the application was allowed subject to payment of 50% arrears to the complainant as existing that day. The case was adjourned to

11.10.2024 for awaiting further orders of the revisional Court. On 11.10.2024, 50% arrears were not paid by respondent Vijay Kumar. Case was adjourned to 24.10.2024, and on that day *ex parte* evidence of the petitioner was recorded. After hearing *ex parte* arguments, the complaint was decided on 10.01.2025. Following orders were passed.

“i. Order under Section 18 of the Act: The respondents are prohibited to commit any act of domestic violence against the complainant.

ii. Order under Section 19 of the Act: The respondent No.1 is ordered to provide separate accommodation to the applicant at the place of shared household or in alternate to pay monthly rent for the accommodation of the applicant at the rate of Rs.5,000/- per month, to be operative from the date of order. Besides, the respondent No.1 is ordered to pay one time reasonable litigation expenses of Rs.15,000/- to the applicant.

iii. Order under Section 20 of the Act: The respondent No.1 is ordered to pay a monthly monetary relief of Rs.15,000/- per month to the complainant inclusive of maintenance allowance granted under any other law, to be operative from the date of application.

iv. Order under Section 22 of the Act: The respondents are directed to pay the sum of Rs.2,00,000/- to the complainant as compensation for mental torture and emotional distress.’

6. The argument of learned Counsel for the petitioner that petitioner was wrongly proceeded against *ex parte*, though his counsel was present, is against judicial record. The argument that learned Magistrate did not permit the petitioner to deposit 50% of the remaining amount of the maintenance is also against record. Presumption of correctness attaches to judicial record and there is no reason to believe that petitioner was proceeded *ex parte* despite presence of his counsel or

that learned Judicial Magistrate First Class did not permit him to deposit 50% arrears.

7. Since the petitioner failed to contest the complaint under Section 12 of the Act 2005 before the learned learned Judicial Magistrate First Class and also failed to pay up the 50% arrears as directed, for setting aside the *ex parte* order, learned Judicial Magistrate First Class correctly proceeded further in the matter.

8. Petitioner has filed an appeal against order dated 10.01.2025 before learned Additional Sessions Judge, Charkhi Dadri which is yet pending and is fixed for arguments. Though, there is a direction vide order dated 01.08.2025 to deposit Rs.5,00,000/- in the account of respondent Beena Devi on or before the date fixed, it does not appear that deposit of the sum of Rs.5,00,000/- is a condition precedent to hearing of the appeal. Since order dated 10.01.2025 of learned Judicial Magistrate First Class is operative and has not been stayed by learned Appellate Court, the petitioner was, in any case, bound to make payment as directed.

9. In this view of the matter, there is no ground to allow the petition under Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023.

10. Following observations of Hon'ble Apex Court in *Shaurabh Kumar Tripathi vs. Vidhi Rawal*; 2025 SCC OnLine SC 1158 may profitably be reproduced:-

“35. When it comes to exercise of power under Section 482 of the CrPC in relation to application under Section 12(1), the High Court has to keep in mind the fact that the DV Act, 2005 is a welfare legislation specially enacted to give justice to those

women who suffer from domestic violence and for preventing acts of domestic violence. Therefore, while exercising jurisdiction under Section 482 of the CrPC for quashing proceedings under Section 12(1), the High Court should be very slow and circumspect. Interference can be made only when the case is clearly of gross illegality or gross abuse of the process of law. Generally, the High Court must adopt a hands-off approach while dealing with proceedings under Section 482 for quashing an application under Section 12(1). Unless the High Courts show restraint in the exercise of jurisdiction under Section 482 of the CrPC while dealing with a prayer for quashing the proceedings under the DV Act, 2005, the very object of enacting the DV Act, 2005, will be defeated.

36. We must also note here that against an order passed by a learned Magistrate, there is an appeal provided under Section 29 to the Court of Session. In contrast, generally, there is no remedy of appeal available against an order taking cognizance of an offence or an order issuing process. This is another reason why the High Court should exercise caution when exercising its inherent jurisdiction to quash proceedings under Section 12 of the D.V. Act, 2005.

11. The petition under Section 528 of BNSS is dismissed. Appropriate remedy available to the petitioner is to seek redressal of his grievance by challenging the order of learned Judicial Magistrate First Class by filing statutory appeal, which has already been done. The matter requires adjudication by the Court in appeal. It is, however made clear that the direction to deposit Rs.5,00,000/- shall not be taken as condition

precedent to hearing of the appeal and learned Additional Judge, Charkhi Dadri shall expeditiously decide the matter in the interest of justice.

12. Pending application(s), if any, stand disposed of.

(SHALINI SINGH NAGPAL)
JUDGE

10.09.2025
Sunil Chander

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No