

Neutral Citation No. - 2025:AHC:136036

A.F.R.

RESERVED

Court No. - 29

Case: APPLICATION U/S 482 No. - 35994 of 2024

Applicant: Sattar Ahmad & 4 Ors

Opposite Party : State of U.P. and Another

Counsel for Applicant : Vinod Singh

Counsel for Opposite Party : G.A.

Hon'ble Vinod Diwakar,J.

1. Heard Shri Vinod Singh, learned counsel for the applicants, Shri Vibhav Anand Singh, learned A.G.A. for the State, and perused the material available on record.

2. The present application has been filed seeking quashing of the entire proceedings arising out of Case Crime No. 494 of 2013, under Section 31 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Act, 2005'), registered at Police Station Swar, District Rampur, which is presently pending before the Court of Ist Additional Chief Judicial Magistrate, Rampur.

3. The principal question for adjudication in this application is whether the police is empowered to register an FIR on the basis of a complaint submitted by the “*aggrieved person*”, carry out investigation, and thereafter submit a charge-sheet under Section 31 of the Act, 2005.

4. Learned counsel for the applicants contends that the registration of an FIR under Section 31 of the Act, 2005, is legally impermissible, thereby rendering all subsequent proceedings arising therefrom *void*

ab initio. It is further submitted that the procedure adopted by the then learned Additional Chief Judicial Magistrate in the present case has not been in conformity with the settled principles of criminal jurisprudence and appears to be procedurally flawed. Apart from other submissions on merits, learned counsel for the applicants also submits that the present application has been filed on the basis of a compromise arrived at between the parties.

5. This Court, by order dated 21.01.2025, directed the then Station House Officer (SHO), the Investigating Officer (I.O.), and the officer who had forwarded the charge-sheet to the Court to remain present virtually through video conferencing on the next date of hearing to explain the reasons for filing the charge-sheet under Section 31 of the Act, 2005.

6. In compliance with the aforesaid order, Sub-Inspector Shri Javed Ali appeared virtually and submitted that he was not fully conversant with the applicable legal provisions at the relevant time, as he had joined the service only a month prior to the completion of the investigation. Circle Officer Shri Ravi Shankar, who had forwarded the charge-sheet, submitted that he had assumed the charge merely a day before filing of the charge-sheet and, therefore, sought leniency for the procedural lapse. A similar explanation was tendered by the then Station House Officer (S.H.O.). Upon due consideration of their submissions and the circumstances on record, their personal appearance was exempted. The concerned officers were accordingly let off with a stern warning and were duly sensitized to exercise greater caution, legal awareness, and diligence in the discharge of their official duties in the future.

7. By order dated 18.02.2025, this Court had called for an explanation from the then learned Magistrate, through the Registrar General of this Court, who had taken cognizance on the basis of a

police report filed for an offence under Section 31 of the Act, 2005. Upon perusal of the office report dated 03.03.2025, it transpires that the said Judicial Officer is presently posted as Additional District and Sessions Judge, Ghaziabad.

8. In compliance with the order dated 04.03.2024, the learned Additional District & Sessions Judge, Ghaziabad, submitted a report stating that, while serving as the ACJM, Rampur, cognizance was taken against the applicants on 26.07.2016 in a case arising out of FIR No. 494 of 2013, registered under Section 31 of the Domestic Violence Act at Police Station Swar, District Rampur. The report further mentions that cognizance under Section 31 of the Act, 2005 was taken by invoking Section 2(d) of the Cr.P.C., which defines a "*complaint*," and thereby treating the police report as a "*complaint*."

9. In order to assist the Court in arriving at a just and legally sound conclusion, learned Senior Advocate Shri Mangla Prasad Rai, has graciously consented to render his assistance. Accordingly, he was appointed as *Amicus Curiae* to assist the Court in examining the legal issues involved.

10. Shri Mangla Prasad Rai, learned *Amicus Curiae*, submitted that under Section 154(1) of the Cr.P.C., the police is empowered to register an FIR, investigate the matter, and, upon submission of the charge-sheet, the Magistrate may take cognizance of offences, except in those categories of cases where there exists an explicit bar on the Court to take cognizance unless a complaint is made by the appropriate authority or by a person duly authorized by the central or state government. In the present case, it was submitted that the learned ACJM could have taken cognizance only on an application filed before the Court under Section 12 of the Act, 2005, by the "*aggrieved person*", and not on the police report, expressly barred by Section 2(d) CrPC.

11. He further submitted that an “*aggrieved person*” may file a complaint before a service provider, a police officer, or a Magistrate, and the respective duties of these authorities are set out under Section 5 of the Act, 2005. However, the learned *Amicus Curiae* emphasized that the offence under Section 31 of the Act, 2005, stands on a distinct footing, and the police is empowered to register an FIR only in instances involving a breach of a protection order.

11.1 In this context, the learned *Amicus Curiae* further contented that Section 2(a) of the Act, 2005 defines an “*aggrieved person*” as any woman who is, or has been, in a domestic relationship with the respondent and claims to have suffered domestic violence by the respondent. Section 2(d) of the Code of Criminal Procedure defines a “*complaint*” as any allegation made orally or in writing to a Magistrate with the intention of initiating action under the Code, excluding a police report. Rule 2(b) of the Domestic Violence Rules, 2006, defines a “*complaint*” as any allegation, either oral or written, made by any person to the Protection Officer. Collectively, these provisions distinguish between who can seek protection under the Act, 2005 and the formal modes of initiating legal action, either before a Magistrate or a Protection Officer.

12. As per Section 4 of the Act, 2005 any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer. And thereafter the Protection Officer would assist the Magistrate and to the “*aggrieved person*” either by approaching to the Magistrate by way of filing an application or by preparing the “*incident report*” and forwarding the same to the Magistrate and a Police Officer, Protection Officer, Service Provider or Magistrate who has received a complaint of domestic violence or person at the place of incident of domestic violence or when the incident of domestic violence reported to him, shall inform to the

“aggrieved person” about his legal rights to approach to the Magistrate by way of filing an application under Section 12 of the Act, 2005, or to the police for registration of FIR under Indian Penal Code or other Special Act, like Dowry Prohibition Act etc.

13. The Protection of Women from Domestic Violence Act, 2005, is a significant piece of beneficial social welfare legislation enacted to provide effective protection to women who are victims of violence within domestic relationships. The Act adopts a comprehensive definition of '*domestic violence*', encompassing physical, sexual, verbal, emotional, and economic abuse.

14. Notably, the Act, 2005 does not contain any specific provision empowering the police to register a First Information Report (FIR) solely under its provisions. Instead, where the acts complained of amount to cognizable offences under penal law—such as cruelty, assault, criminal intimidation, or dowry-related harassment—an FIR can be registered under the relevant provisions of the IPC, and investigated accordingly, except in instances invoking breach of protection order.

15. The Supreme Court in *V.D. Bhanot v. Savita Bhanot*¹ has held that that the civil remedies provided under the Domestic Violence Act coexist with criminal remedies available under general penal law. Further, the Supreme Court in *Inderjit Singh Grewal v. State of Punjab*² clarified that the Domestic Violence Act primarily envisages civil reliefs and does not, by itself, create criminal liability unless read with corresponding provisions of the IPC. Thus, while the Act provides a civil adjudicatory framework, criminal prosecution for acts constituting domestic violence must be pursued under the substantive provisions of the IPC or other applicable criminal statutes.

16. Section 31 of the Protection of Women from Domestic Violence Act, 2005, provides that any breach of a protection order or an interim

1 (2012) 3 SCC 183

2 (2011) 12 SCC 588

protection order by the respondent shall constitute a cognizable and non bailable-offence, punishable with imprisonment of either description for a term which may extend to one year, or with a fine which may extend to twenty thousand rupees, or both. The underlying object of this provision is to ensure the effective enforcement of “*protection orders*” and to deter any act of non-compliance by the respondent.

17. Sub-section (2) of Section 31 of the Protection of Women from Domestic Violence Act, 2005, provides that, as far as practicable, the offence of breach of a protection order under sub-section (1) shall be tried by the same Magistrate who originally passed the said order. Crucially, an offence under Section 31 arises only upon the violation of a “*protection order*” or “*interim protection*” order duly issued by the Magistrate. It is only such a breach that is treated as a cognizable offence under the Act. In the absence of such an order, no cognizable offence under Section 31 can be said to exist.

18. Therefore, in the absence of a prior protection order duly passed by the Magistrate, the police is not empowered *per se* to register an FIR under Section 31 of the Act. The procedural mandate of the Act requires that the process be initiated through the civil mechanism envisaged under Sections 12 to 23 of the Act, and only upon breach of such an order does criminal liability under Section 31 of the Act, 2005 arise.

19. The explanation furnished by the then Additional Chief Judicial Magistrate, Rampur, is found to be legally untenable. Section 2(d) of the Code of Criminal Procedure, 1973, explicitly stipulates that a “*complaint*” does not include a police report. Consequently, a police report submitted after investigation under the Domestic Violence Act, 2005 cannot be treated as a ‘*complaint*’ for the purpose of taking cognizance under the Act, 2005. If the police report itself lacks legal foundation, it cannot form the basis for taking cognizance and treating

it as a complaint amounts to a legal error. Therefore, the explanation offered by the learned Additional District and Sessions Judge is legally flawed and without merit. He has accordingly been cautioned and warned to exercise due care and apply proper judicial mind in future while discharging judicial functions. Mere submission of an explanation cannot validate a legal or procedural illegality.

20. In view of the aforesaid facts and circumstances, charge-sheet No. 47 of 2014 dated 14.2.2014, the cognizance order dated 26.7.2016, as well as the entire proceedings of Case No. 1660 of 2016, *State v. Sattar Ahmad & Ors*, arising out of Case Crime No. 494 of 2013 under Section 31 of the Protection of Women from Domestic Violence Act, 2005, registered at P.S. Swar, District Rampur, and pending before the Court of the Ist Additional Chief Judicial Magistrate, Rampur, are hereby quashed. Accordingly, the application stands allowed.

21. Parting with the case, this Court finds it necessary to issue a detailed order due to the erroneous justification provided by the learned District and Sessions Judge for taking cognizance under Section 2(d) of the Cr.P.C. in a matter that, by law, can only be tried as a complaint case after the “*aggrieved person*” files an application under Section 12 of the Domestic Violence Act, 2005—a basic and routine judicial exercise carried out by the learned Magistrates. While this Court acknowledges the overburdened nature of Magistrates' Courts, had the learned Additional District and Sessions Judge's explanation been based on a simple mistake of fact or oversight, this Court would have refrained from issuing a detailed order. However, the erroneous explanation provided by a senior member of the District Judiciary necessitates a thorough review, thereby prompting this Court to pass the present detailed order.

22. Registrar (Compliance) is hereby directed to forward a copy of this order to the then ACJM, Rampur, who had passed the impugned

order and is presently posted as Additional District and Sessions Judge, Ghaziabad.

Order Date :- 12.8.2025

A. Tripathi